



City of Chula Vista

Staff Report

File#: 15-0658, **Item#:** 15.

CONSIDERATION OF APPROVING THE DEVELOPMENT AND OPERATION OF A CHULA VISTA BMW DEALERSHIP

RESOLUTION NO. 2015-289 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING AN OWNER PARTICIPATION AGREEMENT BETWEEN THE CITY AND SUNROAD BCV HOLDING, INC. OR AN AFFILIATE; MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH; AND AUTHORIZING THE EXECUTION AND IMPLEMENTATION OF SAID OWNER PARTICIPATION AGREEMENT

RECOMMENDED ACTION

Council conduct the public hearing and adopt the resolution.

SUMMARY

This proposed Owner Participation Agreement ("Sunroad OPA") with Sunroad BCV Holding, Inc. or an affiliate (the "Participant") represents a significant milestone in the City's long-term efforts to innovatively and effectively plan for the City's unfolding auto park. The Sunroad OPA will guide the development of a proposed 3.85-acre BMW auto dealership consisting of a 28,038-square-foot building (showrooms, administrative offices, service area, etc.), and service reception area. BMW will be the first luxury auto dealership that will be built and operated as part of the City's Auto Park East and Auto Park North Specific Plans. The Sunroad OPA provides for the sale to the City of a twenty (20) year operating covenant, and the City's payment of the operating covenant purchase price of up to \$3.3 million over that 20 year period.

ENVIRONMENTAL REVIEW

Environmental Notice

The environmental impacts of the Chula Vista Auto Park East were evaluated in the previously adopted Mitigated Negative Declaration IS-02-010 for the Auto Park East project and specific plan.

Environmental Determination

No additional CEQA findings are required at this time because the Sunroad OPA does not approve any specific development, but rather is a government funding mechanism and fiscal activity that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment within the meaning of Section 15378(b)(4) of the CEQA Guidelines, Chapter 3 of Title 14 of the California Code of Regulations; therefore approval of the Sunroad OPA does not constitute approval of a "project" under CEQA. The development of the

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Approved Dealership will be subject to compliance with all federal, state and local laws, including the Chula Vista Municipal Code and CEQA, prior to approval of entitlements or issuance of permits by the City.

BOARD/COMMISSION RECOMMENDATION

Not Applicable.

DISCUSSION

The City has proactively planned for the development of an auto park along the Main Street corridor east of the I-805 Freeway between Brandywine Avenue and Maxwell Road. As part of those planning activities, City staff have worked closely with existing auto dealerships, prospective dealerships, and master developers to coordinate and assemble many moving parts that comprise the auto park in Chula Vista, including:

- ♦ Specific plans for two auto parks, North and East.
- ♦ Environmental (CEQA) review.
- ♦ Master OPAs with master developers.
- ♦ A dealership owners association, comprised of all existing and future dealerships, with association governed covenants, conditions, and restrictions (CC&Rs).
- ♦ Individual OPAs with individual property owners and dealerships.

With respect to the Sunroad property and BMW dealership, a number of prior City approvals have preceded the current proposed Sunroad OPA:

- ♦ On June 1, 2004, the City adopted a Mitigated Negative Declaration (IS-02-010) for the Auto Park East project and specific plan, including all future dealership-specific projects (including the proposed BMW dealership).
- ♦ On June 8, 2004, the City adopted Ordinance No. 2965 adopting a specific plan (PCM-02-10) for the 29-acre Auto Park East property. The Specific Plan establishes the City's land use policies and entitlements that govern the 29-acre Auto Park East property and all future auto dealerships within.
- ♦ On August 24, 2004, the City Council approved the Master Owner Participation Agreement ("Master OPA") with Fred Borst, Borst Family Trust, Fask Land, Inc., establishing development standards and performance requirements for the 29 acres of territory within the Auto Park East Specific Plan. The Master OPA sets forth a number of developer obligations of both the existing master developer and future individual property owners and dealership owners, such as Sunroad BCV Holding, Inc. and the BMW auto dealership. The Master OPA and the proposed Sunroad OPA will concurrently guide the development, maintenance, and operation of the Sunroad property as a "first quality, first class" auto dealership.

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The Sunroad OPA will ensure a “first quality, first class” BMW dealership through the imposition and purchase, by the City, of restrictive and limiting operating covenants on the property and dealership, including specified development obligations, maintenance requirements, non-discrimination covenants, and restrictive operating covenants. A thorough analysis was prepared and reviewed by staff in order to arrive at the appropriate level of assistance in exchange for the purchase of a twenty (20) year operating covenant. The assistance provided through the purchase of the operating covenant on the property and dealership will ensure and provide for the development and maintenance of a “first quality, first class” BMW dealership for 20 years.

In exchange for the Participant's acceptance of and compliance with those requirements and restrictions on the land, and the development and maintenance of the property as a “first quality, first class” BMW auto dealership, the City will agree under the Sunroad OPA to make quarterly payments to the Participant calculated as a percentage of the City's share of net sales tax revenues generated by the project. The structure of the monetary disbursements and conditions of disbursement are further described below.

Disbursement Structure and Schedule

Quarterly disbursements will be made by the City to the Participant in accordance with a pre-determined schedule of disbursements. The Sunroad OPA provides that the City will pay an amount equal to fifty percent (50%) of the City's Sales and Use Tax Revenue generated by the operation of the approved Dealership paid by the City pursuant to Section 201.3 up to a total aggregate amount of the Operating Covenant Purchase Price of \$3.3 million. Disbursements will be distributed each quarter, commencing with the City's receipt of Sales and Use Tax revenues from the operation of the BMW Dealership during the first quarter after Participant has commenced operations. Disbursement amount will be calculated as a percentage portion of the City's share of sales tax revenues generated by Participant.

The structure of the agreement conceptually represents a shared performance agreement between the City and the Participant whereby both parties will proportionately benefit from the BMW dealership's level of performance.

Conditions of Disbursement

In addition to all of the maintenance requirements and operating covenants contained in the Sunroad OPA, the Agreement further establishes the following conditions of disbursement:

1. Execution and Delivery of Documents. The Operating Covenant shall have been executed by the City and the Participant and recorded against the property in the official records of San Diego County.
2. Insurance. The Participant shall have provided proof of insurance as required.
3. Regulatory Approvals. Assuming no protests have been lodged against the location and opening of the dealership, the Participant shall have obtained any legally required regulatory approval(s) from applicable governmental agency(ies) related to the Participant's ownership and operation of the applicable dealership on the property.
4. Manufacturer Approval. The Participant shall have received any required approval(s) from the manufacturer for the operation of the applicable dealership upon the property.
5. Payment of Taxes. No ad valorem real property taxes or assessments assessed with respect to the property shall be delinquent, nor shall any sales and use taxes assessed with respect to the Site pursuant to the Sales Tax Law be delinquent.
6. No Default. There shall exist no condition, covenant, event or act which would constitute an event of default, or which, upon the giving of notice or the passage of time, or both, would constitute an event of default.
7. Dealership Continuous Operation. The applicable dealership on the property shall be in continuous operation

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and generating sales tax revenues in compliance with the Operating Covenant and the Sunroad OPA.

8. Annual Appropriation. The City Council shall have made an appropriation for the applicable quarterly Disbursement Payment pursuant to Section 201.1.
9. Environmental Condition of the Property. The Participant shall not be in default of the requirements regarding the environmental condition of the property.
10. Financial Report. The Participant shall have provided necessary documentation and annual certification required by section 201.4 relating to the Sales and Use Tax revenues and compliance with the Operating Covenant.

DECISION-MAKER CONFLICT

Staff has reviewed the property holdings of the City Council members and has found no property holdings within 500 feet of the boundaries of the property which is the subject of this action. Consequently, this item does not present a disqualifying real property-related financial conflict of interest under California Code of Regulations Title 2, section 18702.2(a)(11), for purposes of the Political Reform Act (Cal. Gov't Code §87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The Sunroad OPA supports the Economic Vitality goal 2.1.2 as it fosters investment in Western Chula Vista or more specifically the Chula Vista Auto Park.

CURRENT YEAR FISCAL IMPACT

There is no current year fiscal impact by adoption of this resolution.

ONGOING FISCAL IMPACT

The on-going fiscal impact of the Sunroad OPA will be an amount equal to fifty percent (50%) of the City's Sales and Use Tax Revenue generated by the operation of the approved Dealership up to an aggregate amount of the Operating Covenant Purchase Price of \$3.3 million. Disbursements will be distributed each quarter, commencing with the second quarter after Participant has commenced operations. Disbursement amount will be calculated as a percentage portion of the City's share of sales tax revenues generated by Participant.

ATTACHMENTS

1. Owner Participation Agreement
2. Report required pursuant to Government Code Section 53083(a) (AB 562)

Staff Contact: Eric Crockett, Director of Economic Development