

(160)



SALES TAX SHARING AND OPERATING AGREEMENT

between

THE CITY OF BANNING,  
a California municipal corporation

and

DALIA AUTO GROUP, LLC and KHAN PROPERTIES AND HOLDINGS, LLC

doing business as  
DIAMOND HILLS CHEVROLET BUICK GMC  
a Limited Liability company

This Sales Tax Sharing Agreement ("Agreement") is entered into between (i) the CITY OF BANNING ("Banning or "City"), a municipal corporation, and (ii) DALIA AUTO GROUP, LLC and KHAN PROPERTIES AND HOLDINGS, LLC, limited liability companies, doing business as DIAMOND HILLS CHEVROLET BUICK GMC ("Dealership"). Banning and Dealership are each individually referred to as a "party" and collectively as the "parties."

**1. EFFECTIVE DATE**

This Agreement will not become effective until it (i) has been duly executed by the authorized officers of the Dealership and delivered to Banning, and (ii) has been duly approved by the City Council of the City of Banning (the "Effective Date").

**2. RECITALS AND REPRESENTATIONS**

2.1 The Dealership represents and warrants to the City that it has the legal right to use and occupy that certain real property (the "Property") located within the City of Banning, and commonly known as 4545 W. Ramsey Street and 4661 W. Ramsey Street, Banning, California.

2.2 On January 12, 2012, the City and Diamond Hills Auto Group, Inc. entered into a transferrable "Agreement Regarding Operating Covenant" (the "Amended Original Agreement") whereby the City agreed to (i) Pay Diamond Hills Auto Group, Inc. \$2,000,000 over a ten year period, or until September 2015; (ii) Provide both parties an option to extend the Original Agreement by ten years, or until September 2025, and create a new ceiling of \$5,000,000 if Diamond Hills Auto Group, Inc. added a maximum of two new dealer franchises to their existing dealership; and (iii) Pay Diamond Hills Auto Group, Inc. a sliding percentage scale of sales tax as long as the City maintained a minimum threshold of \$100,000 per year in sales tax by the Dealer. The percentage split was 50% in Year 7. The Amended Original Agreement contemplated a tax-sharing arrangement between Banning and Diamond Hills Auto Group, Inc. by which both parties would eventually split the City's sales tax revenue generated from the operations on a 50/50 basis beyond the City's minimum threshold.

2.3 On November 9, 2015 Dalia Auto Group, LLC and Khan Properties and Holdings, LLC purchased and assumed rights to the Property in the Asset Purchase Agreement and on October 25, 2016 the Banning City Council approved the transfer of Operating Covenant and authorized its amendment on the terms and conditions stated herein.

2.4 Dealership continues to operate the existing automobile dealership commonly known as "Diamond Hills Chevrolet Buick GMC." Dealership has approximately 63 employees, which has increased from approximately 50 employees at time of purchase. In 2016,

Dealership anticipates that it will produce approximately \$332,700 in sales tax revenue to the City, placing it among the City's largest sources of sales tax revenue.

2.5 Dealership anticipates increases in revenues and growth in its automobile sales and service that require it to expand its facilities. Dealership has considered relocating to nearby cities to acquire larger facilities; were that to happen the City would lose a significant share of its total sales tax revenues.

2.6 The City Council, in order to assist in the re-construction, improvement and expansion its facility, determined that providing economic incentive payments to Dealership, in an amount equal to a percentage of the Sales Tax as defined below, would: (i) enhance the quality of the facilities, goods, and services that Dealership makes available to the public and City's residents; (ii) provide desirable and attractive shopping experiences for City's residents and its visitors; (iii) enhance local employment opportunities; and (iv) increase sales tax revenue to the City.

2.7 Dealership represents to City that the Dealership Improvements (as defined below) will result in an increase in sales of both new and used automobiles, automobile parts and services and are anticipated to result in sales tax increment.

2.8 By adoption of Resolution No. 2016-80, the City Council desires to assist the Dealership in the form of annual Economic Incentive Payments, reimbursed on a quarterly basis under the provisions of this Agreement for a term of fifteen (15) years for the cost of Dealership Improvements paid by Dealership, up to a maximum reimbursement of three million two hundred thousand dollars (\$3,200,000).

### 3. TERMS OF SALES TAX SHARING

**NOW, THEREFORE**, in consideration of the mutual promises and covenants of the Parties set forth herein, and for other good and valuable consideration, the value and receipt of which are hereby acknowledged by the Parties, the Parties agree as set forth hereinafter.

#### 3.1 Incorporation of Recitals.

The Parties agree that each of the foregoing Recitals is true and correct and incorporate each of the Recitals in this Agreement by reference thereto.

#### 3.2 Definitions. The terms used in this Agreement shall be given the meaning expressly defined in this Agreement.

- a) "Economic Incentive Payment" shall mean payments by City to Dealership implementing Sales Tax Sharing as provided for in this agreement. The Economic

Incentive Payment is an amount equal to eight-five percent (85%) of the Sales Tax after the City has received one-hundred percent (100%) of the first one hundred fifty thousand dollar (\$150,000) in tax revenue per year, for a term of fifteen (15) years, and up to a maximum payment of three million two hundred thousand dollars (\$3,200,000.00). Payments shall be made quarterly by City to Dealership at a rate of eighty-five (85%) of sales tax revenue received by City, above the first thirty-seven thousand five hundred dollars (\$37,500).

- b) **"Effective Date"** shall mean the date upon which all of the following have occurred: (i) City's City Council has approved the Agreement; (ii) City Manager has executed the Agreement; and (iii) Dealership's authorized representatives(s) have executed the Agreement.
- c) **"Existing Retail Business"** shall mean the Dalia Auto Group, LLC doing business as Diamond Hills Chevrolet Buick GMC located at 4545 W. Ramsey Street and 4661 W. Ramsey Street, Banning, California that is owned and operated by Dalia Auto Group, LLC and Khan Properties, LLC, and consists of new and used car sales, auto parts sales, and automobile service facilities on the Property.
- d) **"Improved Business"** means the Existing Retail Business as improved by the completed Dealership Improvements.
- e) **"Maximum Payment"**. Dealership shall not be entitled to payments from City beyond the fifteen (15) year term, or in excess of the Maximum Payment consistent with this agreement.
- f) **"Property"** shall mean that parcel or parcels of real property upon which Dealership operates the Existing Retail Business.
- g) **"Sales Tax"** on an annual basis, the sales tax actually generated by Dealership and received by City from the State Board of Equalization over the Sales Tax Base. For purposes of this Agreement, the Sales Tax Base is the first one hundred fifty thousand dollars (\$150,000.00) of sales tax revenue generated by Dealership per tax year of which the City shall retain 100%.
- h) **"Sales Tax Base"** shall be the first one hundred fifty thousand dollars (\$150,000.00) of sales tax revenue generated by Dealership per tax year of which the City shall retain 100%.
- i) **"Total Maximum Expense"** shall mean Payments by Dealership for Dealership Improvements reimbursed by the City shall not exceed the Total Maximum Expense of three million two hundred thousand dollars (\$3,200,000.00).
- j) **"Dealership Improvements"** shall mean the expansion, remodeling, renovation and improvement of the Existing Retail Business by (i) enlarging or remodeling the new

car showroom; or (ii) renovating the facility per GM corporate imaging; and (iii) adding a new freeway frontage sign to the newly acquired property adjacent to the facility and identified by Assessor Parcel Numbers 537-100-027-7, 537-100-028-8, and 537-100-029-9.

3.3 **Dealership Obligations** The following are conditions precedent to City's obligation to provide the Economic Incentive Payment to Dealership:

a) Completion of Dealership Improvements. Dealership shall timely undertake all work reasonably necessary to timely complete the Dealership Improvements as provided herein

(i) Deadline. Dealership agrees to begin the Dealership Improvements not later than eighteen (18) months after the Effective Date of this Agreement unless such deadline is extended by approval of City Council.

(ii) Completion Date. Completion of the Dealership Improvements shall be deemed to have occurred on the date where Dealership has substantially completed all Dealership Improvements and City reviews documentation supporting such.

(iii) Improvement Standards. The Dealership Improvements shall be constructed in accordance with all City zoning and building requirements and Dealership shall have procured all necessary permits from City and any other local governmental entity having jurisdiction over the Dealership Improvements or any material aspect thereof. Dealership is solely responsible for undertaking and completing the Dealership Improvements and obtaining all necessary permits at its sole cost.

(iv) Sign Improvement. Dealership shall provide the option to the City to display a message on the freeway frontage sign, including but not limited to "Welcome to Banning."

b) Confirmation of Payments for Dealership Improvements.

(i) Confirmation of Payments for Dealership Improvements. Dealership agrees to provide to City documentation reasonably acceptable to City, including without limitation, invoices, lien releases, and other evidences of Dealership's actual payment, confirming payments to contractors, subcontractors, and vendors.

(ii) City Shall Reimburse up to the Total Maximum Expense. Payments by

Dealership for Dealership Improvements shall be reimbursed by the City up to the Total Maximum Expense of three million two hundred thousand dollars (\$3,200,000.00). If the accepted documentation evidences payments by Dealership of more than the Total Maximum Expense, then City shall have the right to terminate Economic Incentive Payments as per Section 2.8. For example, if Dealership pays four million dollars (\$4,000,000) for Dealership Improvements, the City shall not reimburse more than three million two hundred thousand dollars (\$3,200,000.00) to Dealership.

(iii) City's right to audit Dealership Operations and Documentation of Dealership Improvements. City shall have the right to audit the operations, sales data, and dealership expansion and renovation documentation.

c) Continued Operation. Dealership shall remain in continuous operation during current normal business hours and days for the duration of the fifteen (15)-year period or until receipt of the Maximum Payment, whichever occurs first. Dealership will be considered to be in continuous operation, even if closed on all recognized California and federal holidays, and during times of temporary closure for planned repairs or renovations for which Dealership notified City in writing at least thirty (30) days in advance. No closure shall operate to extend the period during which Dealership may be entitled to receive the Economic Incentive Payment from City.

d) Good Standing. Dealership shall otherwise remain in good standing and not in default of its performance of this Agreement. If dealership does not remain in good standing and in operation, this agreement shall terminate as defined in Section 3.6.

### 3.4 City's Obligation to Make the Economic Incentive Payment

- a) Obligation of City. City shall be obligated to make Economic Incentive Payments to Dealership, at the times and as provided in this Section, provided Dealership has satisfied the conditions precedent to payment set forth in Section 3.3 of this Agreement and otherwise remains in good standing and is not in default under this Agreement.
- b) Sales Tax Sharing Period. Calculation of the Sales Tax sharing shall commence on the Effective Date of this Agreement. The period during which City shall receive Sales Tax which forms the basis of the Economic Incentive Payment shall commence on the Effective Date and shall continue for a period



of not to exceed fifteen (15) years thereafter or until Dealership has received the Maximum Payment. In the event that Sales Tax received by City during the fifteen (15) year period is insufficient to yield the Maximum Payment to Dealership, then Dealership shall not be entitled to further payments or assistance from City. The Parties acknowledge that sales will continue on the Property during the construction of the Dealership Improvements. The 'yearly' period for measurement of Sales Tax shall be in accordance with the normal processes of the City. If necessary to reach the full fifteen (15) year term of the Sales Tax Sharing period, the final month or months shall likewise be prorated.

EXAMPLE OF TAX SHARING REIMBURSEMENT						
ANNUAL SALES TAX	City's Sales Tax Base	City Share over Base	Dealership Share over Base	City TOTAL	Dealership TOTAL	ANNUAL REVENUE
<b>\$ 318,840</b>	<b>\$ 150,000</b>	<b>\$ 25,326</b>	<b>\$ 143,514</b>	<b>\$ 175,326</b>	<b>\$ 143,514</b>	<b>= \$318,840</b>
	100% of first \$150k	15% over \$150k	85% over \$150k			

- c) Making Payment. The Economic Incentive Payment is payable to Dealership by City in quarterly payments within 30 days subsequent to the City's receipt of Sales Tax revenue from the State Board of Equalization in accordance with the City Finance Department's procedures as they may change from time to time.
- d) Exclusions from Sales Tax. Sales Tax not actually received by City, for reasons not within City's control, are not subject to sharing under this Agreement unless and until actually received by City. Transactions and Use Tax collected by City is separate from, and excluded from, the Bradley Burns Uniform Local Sales and Use Tax and shall not be included in the calculation of the Economic Incentive Payment

### 3.5 Sign Improvements.

- a. Dealership shall be entitled to apply for a freestanding freeway-oriented sign. Dealership shall be permitted to a freestanding freeway-oriented sign as outlined in Section 17.36.110 of the sign regulations substantially as illustrated in Exhibit "A" and/or Exhibit "B" of this agreement. Upon submittal of application and approval by City Council, Dealership shall receive entitlement for the freestanding freeway-oriented sign only, as outlined in the zoning ordinance. Prior to approval of a building

permit for the sign structure, the applicant shall submit a sign application to be reviewed and approved by the City Manager or his/her designee in accordance with the design guidelines of Section 17.36.010 of the sign regulations. Any necessary findings regarding the freestanding freeway-oriented sign shall be made at time of building permit application.

- b. Dealership shall be entitled to apply for a freestanding freeway-oriented sign that includes the relocation of an existing billboard that may be incorporated into one sign, or two separate signs. Currently, the Dealership's site includes an existing billboard. Should the business desire to relocate the existing billboard for offsite advertising, Dealership shall apply for approval of a relocation agreement by City Council in accordance with Section 17.36.060(D) of the sign regulations.

### 3.6 **Defaults and Remedies.**

- a) Defaulted Dealership Improvements. Dealership shall be deemed Defaulted if Dealership Improvements have not begun within eighteen (18) months after the Effective Date of this Agreement. At time of Defaulted Dealership Improvements, Tax Sharing split shall revert to terms stated above in Recitals and Representations 2.2, by which both parties will split the City's sales tax revenue generated from the operations on a 50/50 basis above the City's Sales Tax Base, and the Sales Tax Base shall revert to two hundred thousand dollars (\$200,000) annually.
- b) Occurrence of any or all of the following shall constitute a default under this Agreement:
- c) Failure or refusal on the part of either party to perform a material term or obligation of this Agreement.
- d) The filing of a petition in bankruptcy by or against Dealership, or the appointment of a receiver or trustee of any property of Dealership or an assignment by Dealership for the benefit of creditors, or adjudication that Dealership is insolvent by a court, and a failure of Dealership to cause such petition, appointment or assignment to be removed or discharged within sixty days.
- e) Dealership's ceasing for any reason to operate on the Property or its relocation outside the City during the term hereof.
- f) Failure of Dealership to report to the State Board of Equalization all taxable sales actually made from the Dealership and to remit the full amount of the sales tax when due from all taxable sales actually made by Dealership.
- g) Establishment of another facility within California resulting in a diminution of taxable sales below that reported to the State Board of Equalization in calendar year 2015.



### **3.7 Indemnification; Release.**

- a) Survival. The indemnification provided in this section shall survive the termination of, and/or the expiration of the term of, the Agreement for a period of five (5) years from the termination or end of said term.
- b) Dealership agrees to and shall indemnify, defend (with counsel reasonable acceptable to the City) and hold City, and its elected officials, officers, employees, agents, and attorneys (the "Indemnified Parties") harmless from and against all losses, costs and expenses (including reasonable attorneys' fees) damages, claims and liabilities to third parties arising from the evaluation, approval, entering into and carrying out of the terms and provisions of this Agreement, including, but not limited to a challenge to this Agreement or the transactions contemplated by this Agreement, except to the extent causes by the sole negligence or wrongful acts of the Indemnified Parties.
- c) Release. Dealership releases City from any Claims arising from any inability of City to legally collect sales tax, share sales tax as provided in this Agreement, or any other act or omission, including any state statute or regulation to which City is subject, which is beyond City's sole control.
- d) Waiver. Dealership waives any right which it might have or accrue at any time during the effective period of any provision of this Agreement, including these indemnification provisions, or any of its various exhibits, to pursue any legal or equitable remedy or Claim against City, other than for non-payment of Dealership's share of Sales Tax calculated under and otherwise due under the provisions of this Agreement.

### **3.8 Termination of Agreement by City.**

- a) City's Right to Terminate. City shall have the right to terminate its obligations under this Agreement if Dealership breaches any promise, obligation, covenant or duty under this Agreement or the Operating Covenants, including, without limitation, the failure of Dealership to construct the Dealership Improvements, the failure of Dealership to collect Sales Tax, the failure of Dealership to operate the Business continuously during the term of the Agreement, or the failure of Dealership to otherwise satisfy the requirements of this agreement.
- b) Notice of Termination and Cure. In order to terminate this Agreement, City shall first provide notice to Dealership, given in accordance with the notice requirements set forth in Section 6 hereof, specifying Dealership's breach of the Agreement in reasonable detail and indicating what steps Dealership must take to cure the

referenced breach. Dealership will be afforded ten (10) business days from the date of the notice to cure the specified breach(es).

- c) If, at the end of the ten (10) day cure period, any correctible breaches have not been corrected, City shall have the right, at its sole option, to deem the Agreement terminated without further notice or action by City. In such case, Dealership (or any other person or entity receiving any portion of the Economic Incentive Payments directly from City) shall be obligated to immediately repay all installments of the Economic Incentive Payments made by City, together with interest thereon at the highest rate permitted by law, from the date of the initial payment made by City to Dealership.

### 3.9 **Miscellaneous Provisions.**

- a) Council Action. All findings and decisions of the City Council taken in connection with this Agreement with Dealership to participate in Sales Tax Sharing shall be deemed to be reasonable and supported by an adequate and appropriate record. No such findings or decisions shall be subject to challenge or be the subject of any Claim by Dealership. Any action taken by City, including, but not limited to, the termination of this Agreement under the provisions hereof, shall be at the sole option of City and in its sole and absolute discretion, unless a different standard is otherwise specifically indicated. Dealership acknowledges that City would not have entered into this Agreement in the absence of this covenant by Dealership.
- b) Integration. All exhibits attached to this Agreement are deemed to be incorporated into this Agreement by reference.
- c) Further Documents. Dealership agrees to execute any additional documents, forms, notices, applications or other documents which City reasonably determines to be necessary to carry out the intent of this Agreement and/or the intent and provisions of applicable portions of the Code.
- d) Partial Invalidity; Severance. The Parties agree that, should any provision, section, paragraph, sentence or word of this Agreement be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of legislation, the remaining provisions, sections, paragraphs, sentences and words of this Agreement shall remain in full force and effect and the Parties agree in good faith to immediately amend this Agreement in such a way as to provide alternative provisions, sections, paragraphs, sentences or words as necessary to carry out the intent of this Agreement and/or the Code.

- e) Payment of Taxes and Encumbrances. Dealership shall keep current and in good standing and pay prior to delinquency all lawful real property taxes, assessments mortgages payments, loan payments, rents, lease payments, liens, and other monetary encumbrances on or against the Improved Business the repayment of which is secured by the Property, at all times during the term of the Operating Covenants.
- f) Assignments and Transfers. Dealership shall not, without prior written approval of City, which approval may be given or withheld at the absolute discretion of City: (i) assign or attempt to assign this Agreement or any right herein; or (ii) make any total or partial sale, transfer, conveyance, lease, leaseback, or assignment of the whole or any part of the Improved Business and/or the Property or the improvements thereon; or (iii) transfer control of Dealership through whatever mechanism, including, without limitation, sales of stock, a sale of Dealership to any other person or party, or agreements giving voting control to persons not holding an interest in Dealership at the date of this Agreement. This prohibition shall not apply to the reasonable grant of limited easements or permits to facilitate the development of the Property. Notwithstanding the foregoing, City agrees that it will consider an assignment of this Agreement in connection with a sale of the Improved Business to a third party, provided that said third party provides City with such financial or other information as City deems necessary in its sole discretion to enable it to adequately evaluate the experience and ability of the third party to operate the Improved Business. All decisions made by City in connection with such an assignment shall be made at City's sole discretion and in its sole judgment, and shall not be subject to challenge. All rights granted to Dealership under this Agreement shall automatically terminate upon a sale or long-term lease, of longer than three months, of the Improved Business or of the Dealership to a third party, and Dealership shall have no remaining rights under this Agreement, notwithstanding any approved assignments.
- g) Remedies. With respect to any default by the other Party occurring after the Effective Date, whether with regard to a breach during the period of Sales Tax Sharing, the term of the indemnification provided in this Agreement to City by Dealership, or the life of the Operating Covenants, the non-breaching Party may institute legal action to cure, correct or remedy any default, providing that such action is not otherwise prohibited or restricted by the provisions of this Agreement, to recover any damages arising from such breach or to obtain any other remedy consistent with the purposes of this Agreement, and further provided that notice is given in accordance with this Agreement. Any legal actions brought concerning this Agreement or Economic Incentive Payments hereunder must be instituted in

the Superior Court of the County of Riverside, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California.

- h) Governing Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.
- i) Rights are Cumulative; Wavier. Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party. A waiver of a requirement shall not constitute an ongoing waiver of that requirement in the future.
- j) Notices. Any and all notices, demands or communications submitted by any Party to the other Party pursuant to or as required by this Agreement shall be proper if in writing and dispatched by messenger for immediate personal delivery, or by registered or certified United States mail, postage prepaid, return receipt requested, to the principal office of City and Dealership, as applicable, as designated in Section 3.9j hereof. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is dispatched by messenger for immediate personal delivery, or two (2) calendar days after it is placed in the United States mail as heretofore provided. Any notices to any Party required to be given under this Agreement, or given by a Party for other reasons, shall be sent to:

Dealership:

Alam Khan  
Diamond Hills Chevrolet, Buick, GMC  
4545 West Ramsey Street  
Banning, CA 92220

City:

City of Banning  
99 E. Ramsey Street  
Banning, CA 92220  
Attention: City Manager

- k) Conflict of Interest. No elected official, officer, employee or agent of City having any conflict of interest, direct or indirect, related to this Agreement and/or the development of the Dealership Improvements or the Improved Business shall participate in any decision relating to this Agreement.
- l) No Third Party Consideration. Dealership warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial or other consultants, accountants, engineers, architects and the like when such fees are considered necessary by Dealership. For the purposes of this paragraph, third parties shall include any officer, employee, agent or elected official of City.
- m) No Personal Liability of Officials. No elected official, official or officer, employee, agent or attorney of City shall be personally liable to Dealership, its shareholders or principals, or any successor in interest, or any other party or person whatsoever, in the event of any default or breach by City or for any amount which may become due to Dealership or to its successors, or on any obligations under the terms of this Agreement, except for gross negligence or willful acts of such member, officer, employee or attorney.
- n) Force Majeure. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of public enemy; epidemics; quarantine restrictions; freight embargoes or lack of transportation; weather-caused delays; inability to secure necessary labor, materials or tools; acts of the other Party other than as permitted or required by the terms of this Agreement; acts or failure to act of any public or governmental agency or entity other than as permitted or required by the terms of this Agreement (except that action or failure to act by City shall not extend the time for City to act unless such extension is otherwise expressly authorized herewith) unless such action or failure to act is the result of a lawsuit or injunction, or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. Any extension of time for any such cause hereunder shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) calendar days of the commencement of the cause. If notice is not timely given, such extension shall not commence until and if the other Party has actual knowledge of the cause. Times of performance under this Agreement may be extended by mutual agreement in writing by and between City



and Dealership.

- o) Inspections. City shall have the right at all reasonable times, and no cost or expense may be imposed with respect thereto by Dealership, to inspect the books and records of Dealership pertaining to a breach or suspected breach of this Agreement. Matters learned by City in the course of such inspections shall not be disclosed to third parties unless required by law or unless otherwise resulting from or related to the pursuit of any remedies or the assertion of any rights by City hereunder.
- p) City Administration. The City Manager of City is authorized to sign on his own authority amendments to this Agreement which are of routine or technical nature.
- q) Independent Review. Each Party represents and warrants the following: they have carefully read this Agreement, and in signing this Agreement are agreeing to be bound by the same, they have received independent legal advice from legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement, and they have freely signed this Agreement and agreed to be bound by it without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or its respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise. This Agreement shall be interpreted as though prepared jointly by both Dealership and City.
- r) Prevailing Party. If either Party hereto files any action or brings any action or proceeding against the other arising out of this Agreement, seeks the resolution of disputes, or is made a party to any action or proceeding brought by a third party with respect to the Agreement or the participation in either by either Party, then as between Dealership (and any successor in interest thereof) and City, the prevailing Party shall be entitled to recover as an element of its costs of suit or resolution of disputes, and not as damages, its reasonable attorneys' fees as fixed by the Court or other forum for resolution of disputes as may be agreed upon by the Parties in such action or proceeding or in a separate action or proceeding brought to recover such attorneys' fees.
- s) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.
- t) Time Frames. Unless otherwise indicated with respect to a requirement, all time



frames for performance of an act required or permitted by this Agreement shall be calendar days. Time frames measured in months shall be calculated with reference to the actual number of days in the relevant months. Annual time frames shall mean a period of 365 days.

- u) Duplicate Originals. This Agreement shall be executed in two (2) duplicate originals each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the Parties. The Parties may sign this Agreement in counterparts.
- v) Integration. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.
- w) Waivers. All waivers of the provisions of this Agreement and all amendments hereto must be in writing and signed by the appropriate representatives of City and/or Dealership. Other than minor or technical amendments which the City Manager may approve on his own authority, any amendment to this Agreement must be approved by the City Council of City.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF BANNING, a municipal corporation



Michael Rock, City Manager

**ATTEST:**



Marie Calderon, City Clerk

APPROVED AS TO FORM  
AND LEGAL CONTENT:



John C. Cotti, Interim City Attorney  
Jenkins & Hogin, LLC

**CONSULTANT:**

By: 

Name: Alam Khan

Title: Owner



By: 

Name:

Title:

Address: 4545 & 4661 W. Ramsey Street  
Banning, CA 92220

**Two signatures are required if a corporation**

**NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF Riverside

On June 13, 2017 before me, Stacy L. Bovol Notary Public, personally appeared

Alam Khan, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

#### TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

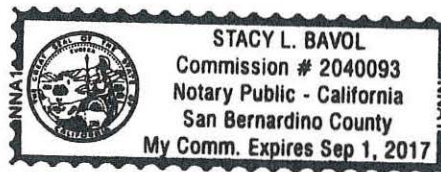
\_\_\_\_\_  
DATE OF DOCUMENT

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

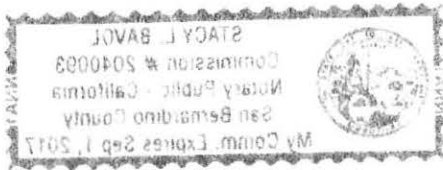
#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

Dalia Auto Group



# EXHIBIT A





# EXHIBIT B





## RESOLUTION 2016-80

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE AGREEMENT FOR SALES TAX SHARING AND OPERATING BETWEEN THE CITY OF BANNING AND DALIA AUTO GROUP, LLC AND KHAN PROPERTIES AND HOLDINGS, LLC, DOING BUSINESS AS DIAMOND HILLS CHEVROLET BUICK GMC AS PRESENTED OR AMENDED BY CITY COUNCIL FOLLOWING PUBLIC COMMENT**

**WHEREAS**, City of Banning ("City") is a California municipal corporation; and

**WHEREAS**, the City proposes to provide assistance in the expansion and renovation of a major automobile dealership in the City; and

**WHEREAS**, Dalia Auto Group, LLC and Khan Properties and Holdings, LLC, doing business as Diamond Hills Chevrolet Buick GMC ("Dalia") is a limited liability company qualified to conduct business in the State of California and City of Banning; and

**WHEREAS**, the sales tax revenue generated by local merchants is critical to the City's economic viability; and

**WHEREAS**, Dalia purchased Diamond Hills Auto Group located at 4545 W. Ramsey Street and 4661 W. Ramsey Street, Banning, California; and

**WHEREAS**, Dalia possesses a valid City of Banning Business License, Sales Permit from the California Department of Motor Vehicles, and Sales and Use Permit from the State Board of Equalization; and

**WHEREAS**, pursuant to Government Code Section 53083, the City has provided detailed terms of a proposed agreement between the City and Dalia in an Economic Development Subsidy Report; and

**WHEREAS**, operation of Dalia in the City, pursuant to the proposed Agreement, would provide the following benefits to the community:

1. Ensuring increased sales tax revenue, which ultimately funds essential City services while securing the City's financial stability
2. Creating at least 10-15 new jobs in the community, thereby stimulating further generation of sales tax revenue and increased demand for housing, goods and services
3. Occupying a strategic site, Dalia complements the three existing new car dealerships with plans of expanding and making it a more appealing, economically vibrant destination for prospective car buyers

**WHEREAS**, City and Dalia have negotiated the terms of an Economic Development Subsidy Agreement to provide assistance to Dalia in purchasing additional parcels with freeway front signage, renovation, and expansion of the dealership, to ensure the long-term success of the City retail operation; and

**WHEREAS**, pursuant to Government Code 53083, the City has held a noticed public hearing regarding the proposed economic development subsidy as required by said statute; and

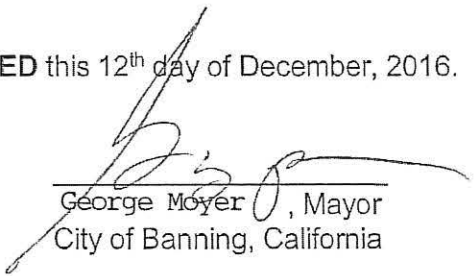
**WHEREAS**, the City has duly considered all terms and conditions of the proposed agreement and maintains it serves the public interest of the City.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

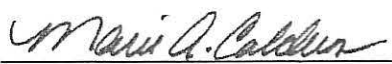
SECTION 1: That the City Council approves the Economic Development Subsidy Report and Agreement as presented or amended by City Council following public comment.

SECTION 2: That the City Council authorizes the City Manager for the City of Banning to execute the Sales Tax Sharing and Operating Agreement.

**PASSED, APPROVED AND ADOPTED** this 12<sup>th</sup> day of December, 2016.

  
George Moyer, Mayor  
City of Banning, California

**ATTEST:**

  
Marie A. Calderon, City Clerk  
City of Banning, California

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

  
John C. Cotti, Interim City Attorney  
Jenkins & Hogan, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2016-80 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12<sup>th</sup> day of December, 2016, by the following vote, to wit:

AYES: Councilmembers Andrade, Franklin, Peterson, Welch, Mayor Moyer  
NOES: None  
ABSENT: None  
ABSTAIN: None



Marie A. Calderon, City Clerk  
City of Banning, California