THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS BOARD ACTION SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA:5.B.9 AGENDA DATE: October 27, 2020

SUBJECT:

Approval of the North Golden State Boulevard Sales Tax Sharing Agreement with the City of Turlock

BOARD ACTION AS FOLLOWS:

RESOLUTION NO. 2020-0571

On motion of SupervisorChies	a, Seconded by Supervisor	Withrow
and approved by the following ve	ote,	
Ayes: Supervisors: Chiesa, With	ow, DeMartini and Chairwoman Olsen	
Noes: Supervisors:	None	
Excused of Absent: Supervisors	District Four vacant	
Abstaining: Supervisor:	None	

- 1) X Approved as recommended
- 2)
- Denied Approved as amended Other: 3) _
- 4)

MOTION:

ATTEST:

A. KING, Clerk of the Board of Supervisors ELIZABE

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS AGENDA ITEM

DEPT: Chief Executive Office

BOARD AGENDA:5.B.9 AGENDA DATE: October 27, 2020

CONSENT: 📈

CEO CONCURRENCE: YES

4/5 Vote Required: No

SUBJECT:

Approval of the North Golden State Boulevard Sales Tax Sharing Agreement with the City of Turlock

STAFF RECOMMENDATION:

- 1. Approve the exchange of sales tax revenue in the proposed North Golden State Boulevard Sales Tax Sharing Agreement between the City of Turlock and County of Stanislaus pertaining to Assessor Parcel No. 045-053-038-000 and Assessor Parcel No. 045-053-039-000.
- 2. Authorize the Chief Executive Officer to negotiate, execute, and sign the proposed North Golden State Boulevard Sales Tax Sharing Agreement.
- 3. Adopt the attached resolution approving the exchange of sales tax revenue as required by article VIII, section 29(b) of the California Constitution and Government Code sections 55700-55707.
- 4. Direct the Auditor-Controller to establish an interest-bearing fiduciary fund to hold the sales tax revenue per the said agreement.

DISCUSSION:

On November 24, 1987, Stanislaus County ("County") and the City of Turlock ("City") entered in a mutual support agreement for the purpose of dealing with impacts of growth for both jurisdictions. Three subsequent amended versions of the agreement dated June 27, 1989, July 11, 1989 and July 19, 1994. On August 29, 2018, the City provided notice of termination of the mutual support agreement.

In recent years, the County and City entered discussions regarding the development of property (APN# 045-053-038-000, 5.94-acres) in an unincorporated area outside of the City of Turlock's Sphere of Influence along Golden State Boulevard. The site is adjacent (northwest) to the Price Ford Dealership located at 5200 North Golden State Boulevard (APN# 045-053-039-000, 6.79-acres). The property owner intends to develop the property as a Price Honda Dealership working with both Stanislaus County and the City of Turlock to meet local development standards and requirements.

In the spirit of the former mutual support agreement, the City and County desire to create a model of cooperation of revenue sharing in the North Golden State Boulevard area north of Taylor Road and specifically pertaining to the two subject parcels.

Under the Bradley-Burns Uniform Sales and Use Tax Law, the County receives 1%, less administrative fee, of sales tax generated in the unincorporated areas. This portion of the sales and use tax represents the Local Jurisdiction share.

The major elements of the North Golden State Boulevard Sales Tax Sharing Agreement revolve around three goals:

- 1. Agree upon a revenue sharing formula for all existing and future uses at the Price Honda property (APN# 045-053-038-000). Upon execution of the agreement, the County will split 50% of the Local Jurisdiction share of the sales tax revenue, with the City.
- 2. Establish the City as the provider of water and wastewater services for both the Price Ford and Price Honda properties. The City shall extend water and wastewater services to the frontage of both the Price Ford and Price Honda properties conditioned upon the property owner executing an out of boundary service agreement with the City and the out of boundary service extension is approved by LAFCO (Local Agency Formation Commission).
- 3. Dedicate sales tax revenue generated from the Price Honda property (APN# 045-053-038-000) for the planning, design and construction of the Taylor Road Interchange at State Highway 99. The County and City each agree to set aside Five Hundred Thousand Dollars (\$500,000) in an interest-bearing fiduciary fund over a 10-year period from their respective shares of sales tax revenues generated by the Price Honda property for a cumulative amount of One Million Dollars (\$1,000,000) as seed funding for the planning and development of improvements that may be required for the Taylor Road Interchange at State Highway 99. In order to ensure that sales tax revenue generation occurs as contemplated in the agreement, the County and City agree to meet and confer in the fifth (5th) year to examine revenue receipts.

The term of the said agreement will be effective for twenty (20) years. Further, the agreement will be automatically extended four (4) times with each extension extending the term an additional five (5) years. The agreement may be terminated sooner either by annexation of the subject properties or mutual agreement.

The proposed agreement attached to this staff report was considered by the Turlock City Council/Successor Agency to the Turlock Redevelopment Agency during its October 13, 2020 regular meeting in an earlier form. The City Council/Successor Agency unanimously approved the agreement presented and related items and authorized the Turlock City Manager to execute all necessary documents to complete the negotiation.

Board approval of proposed North Golden State Boulevard Sales Tax Sharing Agreement, and its terms and conditions, will allow the property owner of the subject properties to move forward with the next step of development of the local car dealership. Rezone Application No. PLN2019-0108 – Price Honda of Turlock is in California Environmental Quality Act (CEQA) Early Consultation with the Stanislaus County Planning and Community Development.

POLICY ISSUE:

Board of Supervisor approval is required to enter into sales tax sharing agreements. Article VII, Section 29(b) of the California Constitution and Government Code Sections 55700-55707 authorizes cities and counties to share between them the revenue derived from any sales or use tax imposed by them and collected for them by the State of California under the Bradley-Burns Uniform Local Sales and Use Tax Law, when the resolution or ordinance proposing such contract is approved by two-thirds vote of the governing body of each jurisdiction that is a party to the contract.

FISCAL IMPACT:

Development of the subject property will generate sales tax revenue that the County will share equally with the City of Turlock per the said agreement. It is anticipated that the property once developed as proposed will generate from \$100,000 to \$200,000 of additional sales tax annually. The County will earmark \$500,000 over a 10-year period from its share of the sales tax received on the Price Honda property (APN# 045-053-038-000).

BOARD OF SUPERVISORS' PRIORITY:

The recommended action is consistent with the Board's priority of *Delivering Efficient Public Services and Community Infrastructure* by capitalizing on opportunities for development and infrastructure improvements along jurisdictional boundaries through cooperative agreement.

STAFFING IMPACT:

The oversight and administration of all sales tax sharing agreements resides with the Chief Executive Office in coordination with the Auditor-Controller and County Counsel.

CONTACT PERSON:

Raul L. Mendez, Assistant Executive Officer	209-525-6333
Thomas E. Boze, County Counsel	209-525-6376

ATTACHMENT(S):

- 1. Resolution Approving Exchange of Sales Tax Revenue
- 2. 2020 Turlock County Sales Tax Rev Sharing

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS STATE OF CALIFORNIA

Date: October 27, 2020	
On motion of SupervisorChi and approved by the following vol	
Ayes: Supervisors:	Chiesa, Withrow, Berryhill, DeMartini, and Chairwoman Olsen
Noes: Supervisors:	None
Excused or Absent: Supervisors:	District Four vacant
Abstaining: Supervisor:	None

THE FOLLOWING RESOLUTION WAS ADOPTED:

Item # 5.B.9

RESOLUTION APPROVING AN AGREEMENT WITH THE CITY OF TURLOCK FOR THE SHARING OF SALES TAX

WHEREAS, the City of Turlock ("City") and the County of Stanislaus ("County") desire to create a model of cooperation and revenue sharing in the North Golden State Boulevard area north of Taylor Road area in City; and,

WHEREAS, the City and the County seek to enter into a proposed North Golden State Boulevard Sales Tax Sharing Agreement ("Agreement") specifically pertaining to Assessor Parcel no. 045-053-038 (referred to hereinafter as "Price Honda") a 5.94-acre parcel and Assessor Parcel No. 045-053-039 (referred to hereinafter as "Price Ford") a 6.79-acre parcel, and as more particularly shown on Assessor Parcel Map Book 45 page 53; and,

WHEREAS, article VIII, section 29(b) of the California Constitution and Government Code sections 55700-55707 authorizes cities and counties to share between them the revenue derived from any sales or use tax imposed by them and collected for them by the State of California under the Bradley-Burns Uniform Local Sales and Use Tax Law, when the resolution or ordinance proposing such contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract; and,

WHEREAS, the Board of Supervisors of the County of Stanislaus, as the governing body of the County, and the City Council of the City of Turlock, have determined the amount of sales tax revenue to be exchanged between their respective agencies which sharing is described in the Agreement; and,

WHEREAS, the City and the County seek to implement the terms of the Agreement.

NOW, THEREFORE, BE IT RESOLVED that the Stanislaus County Board of Supervisors does hereby approve the following:

1. The negotiated exchange of sales tax revenue in the proposed North Golden State Boulevard Sales Tax Sharing Agreement between the City of Turlock and County of Stanislaus is approved and accepted.

2. The Chief Executive Officer is authorized and directed to sign the Agreement in substantially the same form as attached hereto as Exhibit A.

3. A copy of the fully executed Agreement and this Resolution shall be transmitted to the Auditor-Controller, and the officer holding the equivalent position in the City. Thereafter, upon receipt of the sales tax revenues from the State of California, the auditor or equivalent officer shall allocate the funds pursuant to the terms of the Agreement.

ATTEST: ELIZABETH A. KING, Clerk Stanislaus County Board of Supervisors, State of California

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TAX SHARING AGREEMENT

BETWEEN

THE COUNTY OF STANISLAUS

AND

THE CITY OF TURLOCK

DATED: OCTOBER , 2020 December 1, 2020

TAX SHARING AGREEMENT

THIS TAX SHARING AGREEMENT ("Agreement") is entered into by and between the COUNTY OF STANISLAUS, a subdivision of the State of California ("County") and the CITY OF TURLOCK, a California municipal corporation ("Turlock "). The City is referred to herein as "City", or "Cities", and the City and County may sometimes be referred to herein individually as a "Party" or collectively as the "Parties". There are no other parties to this Agreement.

RECITALS

The Parties enter into this Agreement based on the following facts, understandings and intentions:

WHEREAS, the City of Turlock and the County of Stanislaus entered a Mutual Support Agreement dated November 24, 1987, the purpose of which was to deal with impacts of growth for both the City and the County; and

WHEREAS, the City and the County entered into three subsequent amended versions of the Mutual Support Agreement, dated June 27, 1989, July 11, 1989, and the Third Amended Mutual Support Agreement, dated July 19, 1994; and

WHEREAS, the City provided the County notice of termination of the Mutual Support Agreement on August 29, 2018; and

WHEREAS, City and County desire to create a model of cooperation and revenue sharing in the North Golden State Boulevard area north of Taylor Road area in City; and

WHEREAS, this Agreement specifically pertains to Assessor Parcel no. 045-053-038 (referred to hereinafter as "Price Honda") a 5.144-acre parcel and Assessor Parcel no. 045-053-039 (referred to hereinafter as "Price Ford") a 6.858-acre parcel, and as more particularly shown on Assessor Parcel Map Book 45 page 53, attached hereto as Exhibit A.

WHEREAS, City and County desire to remove impediments so that businesses may capitalize on opportunities for development and expansion without being concerned by jurisdictional financial concerns; and

WHEREAS, businesses should not become entangled in disputes between City and County over revenue allocations, jurisdictional boundaries and development standards; and

WHEREAS, article VIII, section 29(b) of the California Constitution and Government Code sections 55700-55707 authorizes cities and counties to share between them the revenue derived from any sales or use tax imposed by them and collected for them by the State of California under the Bradley-Burns Uniform Local Sales and Use Tax Law, when the resolution or ordinance proposing such contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract; and

WHEREAS, the goals of the Parties in entering this Agreement are as follows:

- A. Agree upon a revenue sharing formula for all existing and future uses at the Price Honda property;
- B. Establish the City as the provider of water and waste water services for Price Ford and Price Honda; and

C. Dedicate sales tax revenue for the planning, design and construction of the Taylor Road Interchange at Highway 99.

The Parties hereby agree as follows:

1. Definitions

A. "CDTFA" means the California Department of Tax and Fee Administration and any successor agency.

B. "Sales Tax Revenues" means that portion of the Sales Tax, if any, attributable to Taxable Sales, paid by Price Honda and which is allocated and received by County pursuant to the Sales Tax Law. Local Sales Tax Revenues will not include: (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for or allocated to the State of California, (iii) any administrative fee charged by the CDTFA, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local law, rule or regulation, (v) any Sales Tax attributable to any transaction not consummated prior to the effective date of this agreement, (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside or pledged to a specific use other than for deposit into or payment from a Party's general fund, or (vii) any Sale Tax paid in error or which is subject to correction, adjustment or offset pursuant to an amended return or otherwise where the effect of the error, adjustment or amendment is to change the amount of Sales Tax attributable to Taxable Sales.

C. "Sales Tax" means all sales and use taxes levied under the authority of the Sales Tax Law attributable to Taxable Sales, excluding Sales Tax which is to be refunded to Price Honda because of an overpayment of Sales Tax.

D. "Sales Tax Law" means (i) California Revenue and Taxation Code Section 6001 et seq., and any successor law thereto, including the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code § 7200 et seq.), and any successor law thereto, (ii) any legislation allowing other public agency with jurisdiction in the City to levy any form of Sales Tax on the operations of Fisher Scientific and/or the Distribution Center, and (iii) regulations of the CDTFA and other binding rulings and interpretations relating to (i) and (ii) hereof.

E. "Taxable Sales" means the commercially reasonable business practices and activities of the Price Honda associated with the sale or lease of Material.

F. "Material" means any and all tangible personal property which is offered for sale or lease and which is subject to the Sales Tax Law.

G. "Penalty Assessments" means penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected.

2. Term

This Agreement shall take effect upon being fully executed by all Parties and be effective for a period of twenty (20) years, unless sooner terminated as provided herein. This Agreement will be automatically extended four (4) times ("Extension"), with each Extension extending the Term of

the Agreement an additional five (5) years, unless otherwise terminated sooner or the Parties mutually agree to modify the Agreement pursuant to the provisions herein.

3. Sales Tax Revenue Collection and Share

A. The Parties agree that each shall receive fifty percent (50%) of the Sales Tax Revenues generated from Price Honda beginning the first day of the month immediately following full execution of this Agreement by all Parties.

B. This Agreement shall not apply to any general or special sales and use tax which might be adopted by the County at any time and the County shall retain one hundred percent (100%) of any such special sales or use tax.

C. The Parties agree that there may be changes in the facts and/or amendments to the current law after the effective date of this Agreement that may change the distribution of sales tax to the County or City under this Agreement. The Parties recognize that legislation may be enacted or a court may issue an order that affects or changes the revenues from the subject properties which may impact the type of revenues, the percentage of taxes or fees, the person or entity subject to the taxes and fees, or the manner in which the revenues are distributed to entities. Therefore, if either Party believes that any change in law, whether by legislation or Court decision has occurred that is inconsistent with a Parties' intent, that Party may request and negotiate in good faith a revision of the Agreement to conform with the intent of this Agreement.

4. Reconciliation of Sales Tax Revenue and Payments

A. As soon as possible following the end of each Fiscal Year ("Fiscal Year," means any year commencing on July 1 of any calendar year and ending on June 30 of the subsequent year), the County's Auditor Controller's Office and City's Director of Finance, shall reconcile the amount of the sales tax payments made to the county based on (1) the actual amount received by the County from the CDTFA attributable to the Price Honda; and (2) the allocation percentages enumerated in this Agreement between the Parties. If at any time this reconciliation shows an overpayment was made to the City, the County shall notify the City of the overpayment. The County and the City shall work together to determine the true overpayment. The County makes an underpayment to the City, the County and the City shall work together to ascertain the true amount of the underpayment, and the County shall include the under paid amount in the next payment due to City.

B. If at any time during or after the term of this Agreement, the CDTFA discovers that any portion of Sales Tax Revenue attributed to the Price Honda property was inaccurately allocated and paid to the County, and CDTFA requires repayment or offsets against future distribution of County Sales Tax Revenues, the County shall make a written request for repayment from the City of any amount that was improperly paid to the City. If the City fails to make such repayment within ninety (90) calendar days after the County's written demand, and notwithstanding the provisions of Government Code § 907, the County may satisfy such repayment from any City funds on deposit with the County without additional notice and the repayment obligation of the City shall accrue simple interest of two percent (2%) per annum as of the 91st day from the County's written request.

C. The County Auditor Controller shall work with a designee of the City Manager to make a final reconciliation of the Sales Tax Revenues received by County attributable to Price Honda for

the payments made to City pursuant to this Agreement. The Parties shall notify each other of any over or under payment amounts. The Parties agree to reimburse each other for all underpayments or overpayments identified in the final reconciliation within three months of the date of the notification to the other Party. Should either Party fail to make a required reimbursement within three (3) months, the reimbursement obligation shall accrue interest commencing on the 91st day after the notification to City or County at a two percent (2%) interest rate on the outstanding obligation, compounded monthly, until paid. Notwithstanding the provisions of Government Code § 907, the County may satisfy such repayment from any City funds on deposit with the County without additional notice.

5. Taylor Road Interchange at Highway 99

A. The City and County will each set aside Five Hundred Thousand Dollars (\$500,000) over a 10-year period from their respective shares of the Sales Tax Revenues generated by the Price Honda property for a cumulative amount of One Million Dollars (\$1,000,000) (the "Sales Tax Reserve"). This Sales Tax Reserve is to be used as seed funding for the planning and development of improvements required for the Taylor Road Interchange project at Highway 99.

B. The Parties will establish an interest-bearing fiduciary fund to hold the Sales Tax Reserve from Price Honda. Each party is responsible to ensure that at the end of the 10-year period the amount set aside in their respective fiduciary fund equals Five Hundred Thousand Dollars (\$500,000). Each Party will on an annual basis deliver a report to the other party of the balance set aside in their fiduciary fund.

C. The Parties will meet and confer in the 5th year of this Agreement if the Sales Tax Revenues from Price Honda do not average One Hundred Thousand Dollars (\$100,000) annually over the five-year period.

D. The City will act as the lead agency for development, design and construction of the Taylor Road Interchange project at Highway 99 and will work cooperatively with the County in project development.

6. [Reserved]

7. Water and Wastewater Service

The City shall extend water and wastewater services to the frontage of both Price Ford and Price Honda. The extension of City services is conditioned upon the property owner for Price Ford, and Price Honda, executing an out of boundary service agreement with City and that the out of boundary service extension is approved by LAFCO. The County agrees not to oppose the extension.

8. *Conditions.* The obligations and duties arising under this Agreement are contingent upon the following:

A. The Price Ford and Price Honda properties remaining within the unincorporated area. If the City annexes either, notwithstanding paragraph 9 below, this Agreement terminates on the first day of the next sales quarter following the effective date of the annexation as established by LAFCO.

B. The Price Ford and Price Honda properties are developed and continuously operated as vehicle dealerships and that the vehicle dealerships are operated in a commercially reasonable fashion and that together generate average annual Sales Tax Revenues of not less than \$100,000 for a period of ten (10) years commencing from the effective date of issuance of the certificate of occupancy for Price Honda.

C. The City extends water and wastewater services to the Price Ford and Price Honda as provided herein.

9. *Termination of Agreement*. This Agreement shall automatically terminate as to any property of Price Ford or Price Honda that is annexed, in whole or part, into the City. This Agreement may only otherwise be terminated by mutual agreement of the Parties.

10. Indemnification. Each Party shall indemnify, hold harmless, save and defend the other Party, their officials, agents and employees from and against any and all claims, demands, damages, causes of action, liens, liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, arising out of or in connection with this Agreement. The foregoing shall not apply to the sole negligence of one of the Parties or its officers or employees.

11. *Mutual Defense of Agreement.* If the validity of this Agreement is challenged by a nonparty, the Parties shall defend jointly against the legal challenge and shall share equally, damages awarded and any costs and fees awarded against a Party. Each Party shall promptly notify the other Parties of the pendency of any action initiated by a non-party that challenges the validity of this Agreement. The choice of counsel for defending such non-party action shall be made by the County, with the concurrence of the City Manager for City.

12. Costs of Suit as Between the Parties. If any Party determines to bring legal action related to the obligations and duties arising under this Agreement, each Party shall bear their own costs, expenses, and fees incurred.

13. Assignment. No Party may assign its rights, obligations or interests under this Agreement, directly or indirectly, voluntarily or by operation of law, without the prior written approval of each non-transferring Party. Such consent shall not be unreasonably withheld.

14. *Entire Agreement.* This Agreement constitutes the entire Agreement between the Parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the Parties in interest at the time of such modification.

15. *Amendments.* This Agreement may be amended only by a writing executed by the Parties hereto.

16. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the obligations or duties hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

City of Turlock	County of Stanislaus
Attn: City Manager	Attn: Chief Executive Officer
156 S. Broadway, Ste. 230	1010 10 th Street, Suite 6400
Turlock, CA 95380	Modesto, CA 95354

17. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

18. No Third-Party Beneficiary Rights. This Agreement is entered into for the sole benefit of the Parties hereto and no other person or entity is intended to be direct or incidental beneficiaries of this Agreement and no third-party shall have any right in, under or to this Agreement.

19. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, all parties shall substitute such provision(s) through good faith negotiations.

20. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

COUNTY OF STANISLAUS **CITY OF TURLOCK** By: _ By: Toby Wells, P.E. Jody L. Hayes Chief Executive Officer **City Manager** ATTEST: ATTEST: Elizabeth King Jennifer Land **Turlock City Clerk** Clerk of the Board of Supervisors of the County of Stanislaus, State of California By: TE By: _ **Turlock City Cler** Deputy Cler Dated: Novamber 4, 2020 Dated: December 1, 2020 APPROVED AS TO FORM: APPROVED AS TO FORM: By: (By: Douglas L. White 7homas E. Boze **City Attorney County Counsel**

Exhibit A

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(Assessor Parcel Map)

