



**CITY OF HUNTINGTON BEACH  
SUPPLEMENTAL COMMUNICATION  
Robin Estanislau, City Clerk  
Office of the City Clerk**

**TO:** Honorable Mayor and City Councilmembers  
**FROM:** Robin Estanislau, City Clerk *RE*  
**DATE:** 11/21/2016  
**SUBJECT:** SUPPLEMENTAL COMMUNICATIONS FOR THE NOVEMBER 21, 2016, REGULAR CITY COUNCIL/PFA MEETING

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Attached are the Supplemental Communications to the City Council (received after distribution of the Agenda Packet):

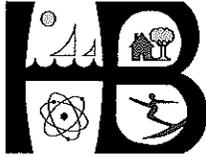
**ADMINISTRATIVE PUBLIC HEARING**

**#13.** Revised Sales Tax Sharing Agreement submitting a correction to Section 2.1 on page 3 and signatures on page 9; and, revised Agreement Declaring Conditions, Covenants and Restrictions for Property submitting a Legal Description as Exhibit A and signatures on page 3.

**#13.** PowerPoint presentation submitted entitled *Sales Tax Sharing Agreement Subaru Dealership*.

**COUNCILMEMBER ITEMS**

**#15.** 6 Email communications received.



# CITY OF HUNTINGTON BEACH

## Interdepartmental Memo

**TO:** Honorable Mayor and City Council Members

**VIA:** Fred A. Wilson, City Manager

**FROM:** Ken Domer, Assistant City Manager  
Kellee Fritzal, Deputy Director Business Development

**DATE:** November 21, 2016

**SUBJECT:** **Administrative Public Hearing – McKenna Motors**

Attached is a minor change to the Sales Tax Sharing Agreement between the City and McKenna Motors. The modification is Section 2.1, second paragraph "The Parties". The previous Agreement limited the assignment of rights and obligation of the Agreement without the expressed written consent of the City, which could be withheld. The revised section, allows McKenna to assign the rights, as long as the underlying business operations as the location remain an automobile dealership.

In addition to the Agreement, the City also has a deed restriction on the property to ensure that it remains a new car dealership for 16 years.

Please feel free to contact me if you have any questions.

### SUPPLEMENTAL COMMUNICATION

Meeting Date: 11-21-16

Agenda Item No.: 13

SALES TAX SHARING AGREEMENT BETWEEN  
THE CITY OF HUNTINGTON BEACH  
AND  
McKENNA MOTORS HUNTINGTON BEACH, INC.

THIS SALES TAX SHARING AGREEMENT ("Agreement") dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and between the CITY OF HUNTINGTON BEACH, a Municipal Corporation of the State of California ("City"), and McKENNA MOTORS HUNTINGTON BEACH, INC., a California corporation ("McKenna").

RECITALS

A. McKenna in the business of selling motor vehicles. McKenna's point of sale for purposes of the Uniform Local Sales and Use Tax Law is located at 18711 Beach Blvd., Huntington Beach, California 92648.

B. McKenna is contemplating opening a new Subaru Dealership at 18711 Beach Blvd., in Huntington Beach.

C. City recognizes that the expansion of McKenna to Huntington Beach will contribute to the economic vitality of the City, provide additional jobs, expand the City's tax base and otherwise improve economic and physical conditions in the City.

D. In order to induce McKenna to open a new Subaru Dealership in Huntington Beach, the City is willing to provide incentive to McKenna as described in this Agreement.

E. By its approval of this Agreement, the City Council of the City of Huntington Beach finds and determines that this Agreement serves a valid public purpose through expanding economic opportunities for businesses in the City, expanding the City's employment base, and generating Sales Tax that City can utilize to fund general governmental services such as police, fire, street maintenance, and parks and recreation programs. City and McKenna have agreed that the respective considerations are a fair exchange.

F. The City has found that it is of benefit to the City and its citizens that certain obligations be imposed upon McKenna's future place of business to ensure Subaru vehicle sales and the resulting sales-tax revenues to the City.

NOW, THEREFORE, based upon the foregoing Recitals and in consideration of the mutual covenants and conditions hereinafter set forth, McKenna and City agree as follows:

## DEFINITIONS.

The capitalized terms and words used in this Agreement shall have the following meanings unless expressly provided to the contrary.

1.1 "Commencement Date" means first day of the month following McKenna Motors Huntington Beach, Inc.'s opening of a Subaru Dealership in Huntington Beach.

1.2 "Event of Default" means any event so designated in this Agreement.

1.3 "Fiscal Year" means the City's Fiscal Year of October 1 through September 30.

1.4 "Laws" means all California State Statutes, laws, Ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or other Governmental Agency.

1.5 "Operating Period" means the period beginning with the Commencement Date and expiring sixteen (16) years later.

1.6 "Party" means any party to this Agreement. The "Parties" shall be all parties to this Agreement.

1.7 "Penalty Assessments" means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of Sales Tax and which are levied, assessed, or otherwise collected from the business on the Site owning or obligated to pay Sales Tax.

1.8 "Person" means any entity, whether an individual, trustee, corporation, partnership, trust, unincorporated organization, governmental agency or otherwise.

1.9 "Sales Tax Increment" means that portion of taxes derived and received by the City of Huntington Beach from the imposition of the Bradley Burns Uniform Local Sales And Use Tax Law, commencing with Section 7200 of the Revenue and Taxation Code of the State of California, as amended, or its equivalent, arising from all businesses and activities conducted on the Site. Sales Tax Increment shall not include Penalty Assessments, any Sales Taxes levied by, collected for or allocated to the State of California, the County of Orange, a district or any other entity, notwithstanding that such funds received by City are derived or measured by such other entity based upon Sales Taxes. The Sales Tax Increment shall not exceed one percent (1%) upon taxable sales and uses on the Site.

1.10 "Site" refers to 18711 Beach Blvd., Huntington Beach, California 92648, the property within the City of Huntington Beach where McKenna will establish a Subaru Dealership.

1.11 "Sales Tax" means the tax derived from McKenna's business conducted on the Site and a portion of which is allocated to and received by the City pursuant to the Uniform Local Sales and Use Tax Law, commencing with California Revenue and Taxation Code Section 7200, *et seq.*, as amended.

## 2. THE PARTIES

2.1 McKenna, a California corporation, whose mailing address for purposes of this Agreement is: 18711 Beach Blvd., Huntington Beach, California 92648. Wherever the term McKenna is used in this Agreement, the term shall be deemed to refer to McKenna Motors Huntington Beach, Inc.

McKenna may assign the rights and obligations of this Agreement to any other person, entity, or organization as long as the underlying business operations at the location remain an automobile dealership.

By executing this Agreement, McKenna warrants and represents to City that it has the full power and authority to enter into this Agreement and that all authorizations and approvals required to make this Agreement binding upon McKenna have been duly obtained.

2.2 The City is a Municipal Corporation, duly organized and existing pursuant to its City Charter.

## 3. OBLIGATIONS OF McKENNA

3.1 Agreement. McKenna hereby covenants and agrees that they have opened a Subaru Dealership and are selling vehicles at the Site within, and to continue to use the Site as its primary Subaru Dealership business location during the Operating Period.

3.2 Site and Restrictions. McKenna shall, within a reasonable time, not to exceed three years from approval of this document by the City Council of the City of Huntington Beach, establish a Subaru Dealership at the Site. The purchase of the Site by McKenna shall result in a deed restriction on the Site, good and lasting for 16 years, which restricts the use of the Site and underlying property for new Auto Sales only. If McKenna is unable to purchase the Site in Huntington Beach, McKenna and the City Manager or his or her designee shall help identify an alternative site within the City of Huntington Beach. If said negotiations are unsuccessful, either party may terminate this Agreement upon thirty (30) days' written notice to the other party.

3.3 Maximize Sales Tax. During the Operating Period, McKenna shall use its best efforts, consistent with the requirements of law, to designate the Site as the point of sale in all sales of its products.

3.4 Indemnification. From the Commencement Date of this Agreement through the termination date, McKenna shall indemnify, defend, and hold harmless City and its officers, employees and agents, from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively "Claims") imposed upon or incurred by or asserted against City arising out of any act or omission of McKenna or its business; provided, however, that the aforesaid obligations of McKenna shall not apply to the extent any Claim results from the active negligence or intentional misconduct of City or any of City's officers, employees, agents, or contractors. In the event that any action, suit or proceeding is brought against City by reason of any such occurrence, McKenna, upon City's request, will, at McKenna's expense, defend such action, suit or proceeding at its sole cost.

3.5 Insurance. McKenna shall take out and maintain in effect through the Operating Period, at McKenna's sole cost and expense, the following insurance policies in the minimum amounts specified and in the forms provided below:

(1) Comprehensive General Liability in an amount of not less than One Million Dollars (\$1,000,000) combined single limits for each occurrence for bodily injury, personal injury, and property damage including contractual liability.

(ii) Workers' Compensation as required by the Labor Code of the State of California and Employers' Liability insurance in an amount not less than required by California law.

3.6 Local, State and Federal Laws. McKenna shall carry out the operation of the business in conformity with all applicable local, State and Federal laws.

3.7 Anti-discrimination. McKenna shall not discriminate against any employee or applicant for employment because of age, sex, marital status, race, handicap, color, religion, reed, ancestry, or national origin.

3.8 McKenna's Representations and Warranties. McKenna makes the following representations and warranties as of the date of this Agreement and agrees that such representations and warranties shall survive and continue thereafter but shall not be remade after the date of this Agreement.

3.8.1 No Litigation. There is no litigation, action, suit, or other proceeding pending or threatened against McKenna or the Site that may adversely affect the validity or enforceability of this Agreement or sale of vehicles at the Site. To the best of McKenna's knowledge, McKenna is not in violation of any State Statute, Federal law, regulation or Ordinance, or of any order of any court or governmental entity, the effect of which would prohibit McKenna from performing its obligations hereunder.

3.8.2 Authority. McKenna has complied with all governmental requirements concerning its organization, existence and transactions. McKenna has the right and power to own and operate its business as contemplated in this Agreement.

3.8.3 No Breach. To McKenna's knowledge, none of the undertakings contained in this Agreement violate any applicable governmental requirements, or conflicts with, or constitutes a breach or default under, any agreement by which McKenna is bound or regulated.

3.8.4 Warranty Against Payment of Consideration for Agreement. McKenna warrants that it has not paid or given, and will not pay or give, to any third person, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as accountants and attorneys.

3.9 Release of City Officials. No member, official, agent, employee, or attorney of the City shall be personally liable to McKenna, or any successor in interest of McKenna, in the event of any default or breach by the City or for any amount which may become due to McKenna or its successors, or on any obligations under the terms of this Agreement. McKenna hereby waives and releases any Claim it may have personally against the members, officials, agents, employees, consultants, or attorneys of the City with respect to any default or breach by the City or for any amount that may become due to McKenna or its successors, or on any obligations under the terms of this Agreement.

3.10 Reports. Within ten (10) days of filing each report with the State Board of Equalization, McKenna shall provide to the City true and correct copies of all reports filed by McKenna with the State Board of Equalization in order to allow the City to preliminarily determine the amount of Sales Tax paid by McKenna on account of sales from the Site; provided, however, that the City shall not be deemed to have received any Sales Tax until the City's actual receipt thereof.

#### 4. OBLIGATIONS OF CITY OF HUNTINGTON BEACH

4.1 Tax Rebate. Within thirty (30) days after the City confirms its receipt of Sales Tax paid by McKenna on account of sales from the Site during the Operating Period, the City shall pay to McKenna on a quarterly basis financial assistance in an amount equal to forty-five percent (45%) of annual Sales Tax Increment generated by McKenna within the City of Huntington Beach and actually received by the City, after the first \$150,800.00 in annual gross sales. City retains all sales tax of the first \$150,800.00 in annual gross sales.

4.2 City's Obligation to Provide Assistance Conditional on Sales Tax Increment. The City's obligation to provide McKenna with assistance pursuant to 4.1 is conditioned upon McKenna producing Sales Tax Increment each Fiscal Year. To the extent McKenna does not produce Sales Tax Increment, then the tax rebate obligations herein shall be reduced to zero.

4.3 Annual Adjustment. Promptly after each fiscal year of the City which includes a portion of the Operating Period, the City shall determine with respect to that fiscal year the aggregate amount of Sales Tax received by the City and the aggregate amount of financial assistance payments made to McKenna pursuant to Section 4.1. If for any reason (including but not limited to reporting errors or other adjustments) the aggregate amount of payments by the City with respect to that fiscal year is less than the aggregate amount payable with respect to that fiscal year, the City shall pay to McKenna an adjustment payment equal to the amount of deficiency; if for any reason (including but not limited to reporting errors or other adjustments) the aggregate amount of payments by the City with respect to that fiscal year is more than the aggregate amount payable with respect to that fiscal year, then the amount of the excess shall be applied against the next payments due under Section 4.1, except that if any unapplied excess remains after the Operating Period, McKenna shall pay the amount of the unapplied excess to the City upon demand.

4.4 Legal Challenge. Should any third party successfully challenge the validity of this Agreement through a taxpayer suit or otherwise, either party may terminate this Agreement upon thirty (30) days written notice.

4.5 Contingent Liability and Limitations. The tax rebate obligations of the City of Huntington Beach shall be subject to the provisions of City Charter Section 605, regarding annual budget appropriations, and will not be payable for a period in excess of the twenty-year Operating Period after relocation to the new site.

## 5. DEFAULTS AND REMEDIES

5.1 Events of Default. The following shall initiate the default sequence:

(a) If McKenna materially breaches any of its obligations under Sections 3.1 through 3.7 of this Agreement.

(b) If McKenna is found by a trier of fact, after hearing, to be in violation of any Local, State or Federal law.

(c) If McKenna is found by a trier of fact, after hearing, in a final, non-appealable order or judgment, either to be in violation of any anti-discrimination regulation or to be liable in a suit for discrimination.

(d) If McKenna fails to provide the City with copies of the quarterly (or, if applicable, monthly) Board of Equalization reports filed by McKenna.

(e) If City fails to timely pay its obligations hereunder.

When any of the initiating events described in this Section 5.1 occur, City or McKenna may give the other written notice to cure. Where such act or omission is not cured by the breaching Party within thirty (30) days after that Party's receipt of written notice that such obligation was not performed, it shall constitute an Event of Default; provided that, if cure cannot reasonably be effected within such 30-day period, such failure shall not be an Event of Default so long as the Party promptly (in any event, within 10 days after receipt of such notice) commences cure, and thereafter diligently (in any event within 10 days after receipt of such notice) commences cure, and thereafter diligently (in any event within a reasonable time after receipt of such notice) prosecutes such cure to completion.

5.2 Remedies Upon Default. Upon the occurrence of any Event of Default, and thirty (30) days after written notice of default, and after a reasonable opportunity to cure such default, City or McKenna, as appropriate, may terminate this Agreement and file any action available in law or equity.

## 6. GENERAL PROVISIONS

6.1 Time of the Essence. Time is of the essence of this Agreement and all Parties' obligations hereunder.

6.2 Venue. In the event of any litigation hereunder, all such actions shall be instituted in the Superior Court of Orange, State of California, or in an appropriate municipal court in the County of Orange, State of California or an appropriate Federal District Court in the Central District of California.

6.3 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

6.4 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

6.5 Attachments Incorporated. The Attachment to this Agreement is incorporated herein by this reference.

6.6 Copies. Any executed copy of this Agreement shall be deemed an original for all purposes.

6.7 Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability, unless it affects the substantial rights of a party or defeats the purpose of this Agreement, shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision has not been contained herein.

6.8 Interpretation. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any party. When the context of this Agreement requires, the neuter gender includes the masculine, the feminine, a partnership or corporation or joint venture or other entity, and the singular includes the plural.

6.9 No Partnership or Joint Venture. The parties hereto agree that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or association between City and McKenna; or cause City or McKenna to be responsible in any way for the debts or obligations of the other, and no other provision contained in this Agreement nor any acts the parties hereto shall be deemed to create any relationship between City and McKenna other than that of contracting parties. Further, nothing herein shall give or is intended to give any rights of any kind to any person not an express party hereto.

6.10 Integration. This Agreement, including the Attachments attached hereto, is the entire Agreement between and final expression of the parties, and there are no agreements or representations between the parties except as expressed herein. All prior negotiations and agreements between City and McKenna with respect to the subject matter hereof are superseded by this Agreement. Except as otherwise provided herein, no subsequent change or addition to this Agreement shall be binding unless in writing and signed by the parties hereto.

6.11 Nonwaiver. None of the provisions of this Agreement shall be considered waived by any party except when such waiver is given in writing. The failure of any party to insist in any one or more instances upon strict performance of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

6.12 Notices. Any notice, approval, demand or other communication required or desired to be given pursuant to this Agreement shall be in writing and shall be effective upon personal service (including by means of professional messenger service) or, five (5) days after mailing via United States first-class mail or two (2) days after mailing via Federal Express or other similar reputable overnight delivery service. Any notice shall be addressed as set forth below:

If to City:

Kellee Fritzel  
Deputy Director of Business Development  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

If to McKenna:

McKenna Motors Huntington Beach, Inc.  
Attn: Daniel J. McKenna III  
18711 Beach Blvd.  
Huntington Beach, CA 92648

With copies to (which shall not constitute Notice):

Michael E. Gates, City Attorney  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

and

Fred Wilson, City Manager  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

Either City or McKenna may change its respective address by giving written notice to the others in accordance with the provisions of this Section.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

McKenna Motors Huntington Beach, Inc., a  
California corporation

By: \_\_\_\_\_

print name

ITS: (circle one) Chairman/President/Vice President

AND

By: \_\_\_\_\_

print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst.  
Secretary - Treasurer

CITY OF HUNTINGTON BEACH,  
a municipal corporation of the State  
of California

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney b/w 11/18/16 MW

INITIATED AND APPROVED:

\_\_\_\_\_  
Deputy Director of Business Development

REVIEWED AND APPROVED:

\_\_\_\_\_  
City Manager

ATTACHMENT NO. 1

McKenna Motors Huntington Beach, Inc.'s Certificate

Date: \_\_\_\_\_

McKenna Motors Huntington Beach, Inc., hereby requests a sales tax rebate in the amount, and on the date, set forth below, pursuant to that certain Sales Tax Sharing Agreement between the City of Huntington Beach and McKenna Motors Huntington Beach, Inc. Capitalized terms used and not otherwise defined herein shall have the meanings set forth for them in the Agreement.

REQUESTED AMOUNT: \_\_\_\_\_

McKenna Motors Huntington Beach, Inc., hereby represents and warrants to City that:

On \_\_\_\_\_, \_\_\_\_\_, McKenna Motors Huntington Beach, Inc., paid Sales Taxes for the \_\_\_\_\_ to \_\_\_\_\_ fiscal year quarter [month] to the California Board of Equalization in the amount of \$ \_\_\_\_\_. Attached hereto is a true and complete photocopy of our quarterly [monthly] filings or other proof of payment.

\_\_\_\_\_  
McKenna Motors Huntington Beach, Inc.

PAYMENT APPROVED:

\_\_\_\_\_  
City Representative

RECORDING REQUESTED BY )  
 AND WHEN RECORDED MAIL TO: )  
 )  
 City of Huntington Beach )  
 2000 Main Street )  
 Huntington Beach, CA 92648 )  
 Attn: City Clerk )  
 )  
 )  
 )  
 )

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(Space above for Recorder's use)  
 This document is exempt from recording  
 fees pursuant to Government Code Section  
 27383.

AGREEMENT DECLARING CONDITIONS, COVENANTS  
 AND RESTRICTIONS FOR PROPERTY  
 (NEW AUTO SALES)

This Agreement Declaring Conditions, Covenants and Restrictions for Property -  
 New Auto Sales (the "Declaration") is made as of \_\_\_\_\_, 20\_\_\_\_ by  
 and between McKENNA MOTORS HUNTINGTON BEACH, INC., a California  
 corporation (the "Covenantor"), and THE CITY OF HUNTINGTON BEACH, a  
 California municipal corporation (the "City").

**RECITALS**

A. Covenantor is the owner of record of that certain real property generally  
 located at 18711 Beach Blvd., Huntington Beach, California and legally described in the  
 attached Exhibit "A" (the "Site"); and

B. On \_\_\_\_\_, the City Council approved that certain Sales  
 Tax Sharing Agreement with Covenantor authorizing a sales tax rebate incentive for the  
 development of a new Subaru dealership on the Site; and

C. The Sales Tax Sharing Agreement requires that the use of the Site be  
 restricted to New Auto sales for a period of sixteen (16) years, and the execution and  
 recordation of this Agreement is intended to fully satisfy these conditions.

**NOW, THEREFORE**, the parties hereto agree and covenant as follows:

1. **Use Restriction.** Covenantor agrees for itself and its successors and  
 assigns, and every successor to Covenantor's interest in the Site, or any part thereof, that  
 the Site shall be held subject to this Declaration for sixteen (16) years from the first day

of the month following Covenantor's opening of a new Subaru Auto Dealership on the Site as follows:

(a) New Auto Sales Only. Covenantor agrees that the Site will be used for purposes of New Auto sales only. As used in this Declaration, the term "Covenantor" shall mean Covenantor, its successors and assigns, and every successor to Covenantor's interest in the Project, or any part thereof.

(b) Duration. The term of this agreement shall commence on the first day of the month following Covenantor's opening of a new Subaru Auto Dealership on the Site and will continue for sixteen (16) years thereafter (the "Term"). The covenant contained in this Section 1 shall run with the land and shall automatically terminate and be of no further force or effect upon the expiration of the Term.

2. Covenants for Benefit of City. All covenants without regard to technical classification or designation shall be binding for the benefit of the City and such covenants shall run in favor of the City for the entire period during which time such covenants shall be in force and effect, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. The City, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any such action at law or suits in equity or other proper legal proceedings to enforce and to cure such breach to which it or any other beneficiaries of these covenants may be entitled during the term specified for such covenants, except the covenants against discrimination which may be enforced at law or in equity at any time in perpetuity.

3. Binding on Successors and Assigns. The covenants and agreements established in this Declaration shall, without regard to technical classification and designation, be binding on Covenantor and any successor to Covenantor's right, title, and interest in and to all or any portion of the Project, for the benefit of and in favor of the City of Huntington Beach. All the covenants contained in this Declaration shall remain in effect for the Term, and shall automatically terminate and be of no further force or effect after such time. Upon expiration of the Affordability Period, City agrees to cooperate with Covenantor, at no cost to City, in removing this Declaration of record from the Site.

4. Counterparts. This Agreement may be executed in a number of counterparts, each of which shall be an original, but all of which shall constitute one and the same document.

5. Applicable Law.

(a) If any provision of this Agreement or portion thereof, or the application of any provision to any person or circumstances, shall to any extent be held invalid, inoperative, or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances,

shall not be affected thereby and it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) This Agreement shall be construed in accordance with the laws of the State of California and all applicable City Codes.

IN WITNESS WHEREOF, the City and Covenantor have caused this instrument to be executed on their behalf by their respective officers hereunto duly authorized as of the date set forth above.

**COVENANTOR:**

MCKENNA INDUSTRIES HUNTINGTON BEACH, INC., a California corporation

By: [Signature]  
print name

ITS: (circle one) Chairman/President/Vice President

**AND**

By: [Signature]  
print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst. Secretary - Treasurer

**CITY:**

CITY OF HUNTINGTON BEACH, a California municipal corporation

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

[Signature]  
City Attorney 11/8/06 DKO, LLW

INITIATED AND APPROVED:

[Signature]  
Deputy Director of Economic Development

REVIEWED AND APPROVED:

\_\_\_\_\_  
City Manager

EXHIBIT "A"

(Legal Description)

Lot 10 in block H of Tract No. 7, in the City of Huntington Beach, County of Orange, State of California, as shown on a map thereof recorded in book 9, page 8, miscellaneous maps, records of said Orange County.

Excepting therefrom the easterly 14 feet as described in deed to the State of California recorded September 18, 1952 in book 2384, page 376, official records.

The south 100 feet of lot 9 in block H of Tract No. 7, in the City of Huntington Beach, County of Orange, State of California, as shown on a map thereof recorded in book 9, page 8, miscellaneous maps, records of said Orange County.

Excepting therefrom the easterly 14.00 feet as described in deed to the State of California recorded August 6, 1952 in book 2365, page 474, official records.

Lots 8 and 9 in block H of Tract No. 7, in the City of Huntington Beach, County of Orange, State of California, as shown on a map thereof recorded in book 9, page 8, miscellaneous maps, records of said Orange County.

Excepting from said lot 8 the north 100 feet thereof.

Also excepting from said lot 9 the south 100 feet thereof.

Also excepting therefrom the easterly 14 feet as described in the deed to the State of California, recorded July 29, 1952 in book 2362, page 324, official records.

APN: 159-102-08

The land referred to herein below is situated in the City of Huntington Beach, in the County of Orange, State of California, and is described as follows:

Parcel A:

Parcels 1 and 2, as shown on a map filed in book 30, page 44 of parcel maps, in the office of the county recorder of Orange County, California.

Parcel B:

The north 100.00 feet of lot 8, in block H of Tract No. 7, in the City of Huntington Beach, County of Orange, State of California, as per map recorded in book 9, page 8, miscellaneous maps, in the office of the county recorder of said county.

Excepting therefrom the easterly 14.00 feet.

Also excepting all oil, gas, minerals and other hydrocarbon substances, lying below a depth of 500 feet, but without the right to surface entry to take, market, mine, explore or drill for same, as reserved in deed recorded July 24, 1964 in book 7148 page 399 pf official records.

APN: 159-102-06 and 159-102-07

November 21  
City Council Meeting

**SALES TAX SHARING  
AGREEMENT  
SUBARU DEALERSHIP**

# Agreement

- Sales Tax Sharing Agreement
- 16 year term
- First \$27 million to City (\$150,800)
- After \$27 million – 55% to City/45% to McKenna Motors
- Estimated \$54 million annually

# Financials

- \$54 million in sales annually
  - City - \$234,500
  - McKenna - \$68,500
- Increased Property tax with the upgrades to building
- McKenna Motors will sign a long term lease with Car Pros Kia to keep Kia in the City

# Subaru Agreement - McKenna

- Private Investment of \$17 million
  - Land Purchase
  - Subaru franchise
  - Site Upgrade

QUESTIONS

**Esparza, Patty**

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**From:** Estanislau, Robin  
**Sent:** Thursday, November 17, 2016 9:34 AM  
**To:** Esparza, Patty  
**Subject:** Fwd: SUPPORT Sullivan's "H" Item on Monday's Agenda . . .

Supplemental Communication

**SUPPLEMENTAL  
COMMUNICATION**

Sent from my iPad

Meeting Date: 11-21-2016

Begin forwarded message:

Agenda Item No.: 15

**From:** "Delgleize, Barbara" <Barbara.Delgleize@surfcity-hb.org>  
**Date:** November 16, 2016 at 10:04:33 PM PST  
**To:** "Estanislau, Robin" <Robin.Estanislau@surfcity-hb.org>  
**Subject:** FW: SUPPORT Sullivan's "H" Item on Monday's Agenda . . .

See what I mean.



**Barbara Delgleize**  
Huntington Beach City Council Member

Work 714.536.5553  
Cell: 714.421.0103  
[Barbara.Delgleize@SurfCity-HB.org](mailto:Barbara.Delgleize@SurfCity-HB.org)  
2000 Main Street, Huntington Beach, CA 92648

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**From:** "Gino J. Bruno" <gbruno@socal.rr.com>  
**Date:** Wednesday, November 16, 2016 at 10:00 PM  
**To:** CITY COUNCIL <city.council@surfcity-hb.org>  
**Cc:** Fred & Tracy Wilson <fred.wilson@surfcity-hb.org>  
**Subject:** SUPPORT Sullivan's "H" Item on Monday's Agenda . . .

Council members:

As you are well aware, a few years ago, there was a proposal on our ballots to change totally the way in which we, the voters of Huntington Beach, choose our city council members. The proposal was that we divide our city into 5 "districts," and that one council member be elected from each of the five districts - we could only vote for one of the candidates running in our specific district.

In other words, we, individually, would be denied the right to vote for 80% of our elected city council members – we could only vote for one council member for our particular district, and his or her seat would only come up for election every four years. Putting that another way, heavy money could come in by a special interest PAC in only one affected district to get what it wanted. Example, developers could spend a lot less money on a favored candidate in one affected district than spending on candidates throughout the city.

Thankfully, that proposal was rejected soundly by the voters of Huntington Beach.

Please SUPPORT Mayor Pro Tem Dave Sullivan's "H" Item (Item #15 on Monday's City Council Agenda) that proposes "The City Council supports the voters' preference and is opposed to the formation of districts for City Council elections."

Thank you.

Gino J. Bruno  
Huntington Beach

**Fikes, Cathy**

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**From:** Mike D <hbsurfer@gmail.com>  
**Sent:** Monday, November 21, 2016 10:55 AM  
**To:** CITY COUNCIL  
**Subject:** Agenda item 15

Dear Mayor Katapodis and Councilmembers,

I am writing in support of Agenda 15 recommending that City Council support the voters' decision to oppose districts for city council races.

We need only look to surrounding cities that have enacted districts to see how divisive and counter productive the results have been. The entire city benefits when all council members are representatives of entire city and committed to working together to solve all the needs of the community as a whole.

Please support Agenda Item 15.

Respectfully,

Michael Daly

Sent from my iPad

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 11-21-16

Agenda Item No.: 15

**Esparza, Patty**

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**From:** Fikes, Cathy  
**Sent:** Monday, November 21, 2016 12:07 PM  
**To:** Esparza, Patty  
**Subject:** FW: Our Preference is to Oppose districts

**From:** James F Kirk [mailto:jimkirk4patents@gmail.com]  
**Sent:** Monday, November 21, 2016 12:06 PM  
**To:** CITY COUNCIL <city.council@surfcity-hb.org>  
**Cc:** JOANNE FERNBACH <jofernbach@aol.com>; Terri & JOSEPH UNGER <josephunger4218@twc.com>; Tony Zazzu <ToNYGiants@aol.com>; Cecil Yates <yatesculpt@yahoo.com>; Bettina Yanez <bettinayanez.ym@gmail.com>; clairekirk@verizon.net <clairekirk@verizon.net>; Colleen Fitzpatrick <cfitzp0425@gmail.com>; Allen B. Christian <wa6srt@gmail.com>; Alex Shane <samadhi\_2@juno.com>; Al Uchizono <alnminnie@verizon.net>; BILL MULLEE <SurfingHBC@msn.com>; Michael McENTEE <mcenteemichael@aol.com>; Bill Chapin & Annice <chapinpatents@dslextreme.com>; Horst Steinhart <fryflyer@ca.rr.com>; yucla Yuri Shane <yucla@verizon.net>; James F Kirk <jimkirk4patents@gmail.com>  
**Subject:** Our Preference is to Oppose districts

**From:** James and Claire Kirk  
**To:** city.council@surfcity-hb.org  
**Sent:** Monday, November 21, 2016 10:48 AM  
**Subject:** Support Agenda Item 15

Dear Mayor Katapodis and Councilmembers,

I am writing in support of Agenda 15 recommending that City Council support the voters' decision to oppose districts for city council races.

We need only look to surrounding cities that have enacted districts to see how divisive and counter productive the results have been.

Note that the Developers would be the true beneficiaries of districts. The developers interested in loading a counsel with their hand picked representatives might only need to spend political dollars in those districts where their particular high density building interests are known to or are likely to be opposed by the candidates running and where there appears to be resistance to their building interests .. all in the future of course.. By targeting specific candidates, a builder with enough money could pack the counsel with just enough votes to control the course.

The entire city benefits when all council members are representatives of entire city and committed to working together to solve all the needs of the community as a whole.

Please support Agenda Item 15.

Respectfully,

**James F. and Claire Y. Kirk**  
16411 Ladona Circle  
Humboldt Island, Huntington Harbour  
Huntington Beach 714 840-1403

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 11-21-16

Agenda Item No.: 15

**Esparza, Patty**

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**From:** Fikes, Cathy  
**Sent:** Monday, November 21, 2016 1:50 PM  
**To:** Esparza, Patty  
**Subject:** FW: Agenda Item 15.

-----Original Message-----

From: Joseph Mastropaolo [<mailto:jamastropaolo@gmail.com>]  
Sent: Monday, November 21, 2016 1:38 PM  
To: CITY COUNCIL <[city.council@surfcity-hb.org](mailto:city.council@surfcity-hb.org)>  
Subject: Agenda Item 15.

Dear Mayor Katapodis and Councilmembers,

I am writing in support of Agenda 15 recommending that City Council support the voters' decision to oppose districts for city council races.

We need only look to surrounding cities that have enacted districts to see how divisive and counter productive the results have been. The entire city benefits when all council members are representatives of the entire city and committed to working together to solve all the needs of the community as a whole.

Please support Agenda Item 15.

Respectfully,  
Joseph Mastropaolo

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 11-21-16

Agenda Item No.: 15

**Fikes, Cathy**

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**From:** Cari Swan <cswanie@aol.com>  
**Sent:** Monday, November 21, 2016 10:48 AM  
**To:** CITY COUNCIL  
**Subject:** Support Agenda Item 15

Dear Mayor Katapodis and Councilmembers,

I am writing in support of Agenda 15 recommending that City Council support the voters' decision to oppose districts for city council races.

We need only look to surrounding cities that have enacted districts to see how divisive and counter productive the results have been. The entire city benefits when all council members are representatives of entire city and committed to working together to solve all the needs of the community as a whole.

Please support Agenda Item 15.

Respectfully,

**Cari Swan**  
20412 Mansard Ln, HB

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 11-21-16

Agenda Item No.: 15

**Fikes, Cathy**

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**From:** Carol Woodworth <kwoodworth@socal.rr.com>  
**Sent:** Monday, November 21, 2016 10:53 AM  
**To:** CITY COUNCIL  
**Cc:** Fikes, Cathy  
**Subject:** Agenda Item #15

Dear Mayor Katapodis and City Councilmembers,

I am writing in support of agenda item #15. Districts will do nothing but pit one neighborhood against another. They will not contribute to the unity nor help us make the best choices for the city as a whole.

Please support agenda item #15.

Sincerely,

Carol Woodworth  
20441 Mansard Lane  
Huntington Beach

**SUPPLEMENTAL  
COMMUNICATION**

Meeting Date: 11-21-16

Agenda Item No.: 15