

City Council Agenda Item Report

Submitted by: Scott Williams
Submitting Department: Finance/Treasury
Meeting Date: December 22, 2021

SUBJECT

Sales Tax Sharing Agreement with Santa Fe Springs (Fashion Nova)

Recommendation:

Adopt Resolution No. 2021-46 approving a sales tax sharing agreement between the City of Vernon and the City of Santa Fe Springs regarding local sales tax revenues generated in either jurisdiction from Fashion Nova, LLC.

Background:

Pursuant to California Constitution Article XIII Section 29(b), staff recommends Council approve the proposed sales tax sharing agreement by adopting a resolution (Attachment 1). The resolution must be approved by a two-thirds vote.

Fiscal Impact:

There is no fiscal impact with this supplemental report.

Attachments:

- [1. Resolution No. 2021-46](#)

RESOLUTION NO. 2021-46

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VERNON APPROVING A SALES TAX SHARING AGREEMENT BETWEEN THE CITY OF VERNON AND THE CITY OF SANTA FE SPRINGS REGARDING LOCAL SALES TAX REVENUES GENERATED IN EITHER JURISDICTION FROM FASHION NOVA, LLC.

SECTION 1. Recitals.

- A. Fashion Nova, LLC (Fashion Nova) is an online retailer with corporate headquarters and other facilities located at 2801 E. 46th Street in the City of Vernon.
- B. Fashion Nova also operates a distribution facility at 12588 Florence Avenue in the City of Santa Fe Springs.
- C. Under the Bradley-Burns Sales and Use Tax Law (Bradley-Burns Tax), cities in which tangible retail sales are generated are entitled to 1% of a retailer's Local Sales Tax Revenues.
- D. As part of its dual physical and e-commerce retail operations, Fashion Nova generates significant sales associated with its business in both Vernon and Santa Fe Springs (Cities).
- E. Vernon currently receives 100% of the 1% Bradley-Burns Tax allocation generated from Fashion Nova's local sales tax revenues.
- F. California Constitution Article XIII Section 29(b) allows neighboring cities to enter into regional sales tax sharing agreements, approved by two-thirds vote of each affected jurisdiction's governing body.
- G. Due to the inherent difficulty and uncertainty in assessing the jurisdiction in which individual sales by Fashion Nova are made for the purposes of assessing Local Sales Tax Revenues and given the collaboration in negotiating sales by staff located at the Vernon Site and at the Santa Fe Springs Site, the two Cities desire to work cooperatively to share equally in all Local Sales Tax Revenues they derive from the operation of the Fashion Nova facilities.
- H. After discussion between key principals at both Cities, staff believes that it is in the public interest to retain the operations of Fashion Nova at the Vernon and Santa Fe Springs Sites, and to do so in a cooperative, fair, and equitable manner.
- I. The proposed Agreement is in accord with applicable state and federal laws and is in the vital and best interests of the Cities and the communities they serve.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VERNON AS FOLLOWS:

SECTION 2. The City Council of the City of Vernon hereby finds and determines that the above recitals are true and correct.

SECTION 3. The City Council of the City of Vernon hereby approves and authorizes the execution by the City Administrator or designee of a Sales Tax Sharing Agreement between the City of Vernon and the City of Santa Fe Springs regarding local sales tax revenues generated in either jurisdiction from Fashion Nova, LLC., attached hereto as Exhibit A.

SECTION 4. The City Clerk shall certify the passage and adoption of this resolution and enter it into the book of original resolutions.

APPROVED AND ADOPTED this 22nd day of December, 2021.

MELISSA YBARRA, Mayor

ATTEST:

LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:

ZAYNAH N. MOUSSA,
Interim City Attorney

**SALES TAX SHARING AGREEMENT
(Fashion Nova)**

between

CITY OF VERNON
a California charter city and California municipal corporation,

and

CITY OF SANTA FE SPRINGS
a California municipal corporation

[Dated as of [12/17/21], for reference purposes only]

SALES TAX SHARING AGREEMENT [FASHION NOVA] BETWEEN THE CITY OF VERNON AND THE CITY OF SANTA FE SPRINGS

This SALES TAX SHARING AGREEMENT (“**Agreement**”) is entered into by and between the CITY OF VERNON, a California charter city and California municipal corporation (“**Vernon**”), and the CITY OF SANTA FE SPRINGS, a California municipal corporation (“**Santa Fe Springs**”). Vernon and Santa Fe Springs are sometimes individually referred to herein as a “Party” and collectively as “Parties” or “Cities.”

ARTICLE 1. RECITALS OF FACT.

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

RECITALS

1.1 FASHION NOVA, LLC, a California limited liability company (“**Fashion Nova**”) operates retail, corporate headquarters and/or distribution facility on certain, improved real property located at 2801 E. 46th Street in the City of Vernon, County of Los Angeles, State of California (the “**Vernon Site**”). Fashion Nova also operates a retail and/or distribution facility on certain real property located at 12588 Florence Ave in the City of Santa Fe Springs, County of Los Angeles, State of California (the “**SFS Site**”). The Vernon Site and the SFS Site are sometimes hereinafter referred to collectively as the “Facilities” or “Sites.”

1.2 Fashion Nova generates, and the Parties wish to ensure via execution of this Agreement that Fashion Nova continues to generate, significant sales and service-related revenues, which will result in the generation of significant new local sales tax revenues from the Facilities for the Parties (“**Local Sales Tax Revenues**” as further defined below). As part of its dual physical and ecommerce retail offerings, Fashion Nova generates significant sales associated with its business in both Cities. Due to the inherent difficulty and uncertainty in assessing the jurisdiction in which individual sales by Fashion Nova are made for the purposes of assessing Local Sales Tax Revenues given collaboration in negotiating sales by staff located at the Vernon Site and at the SFS Site, the Parties desire to work cooperatively to share equally in all Local Sales Tax Revenues they derive from the operation of the Facilities.

1.3 Proposition 11, passed by California voters as a State Constitutional Amendment in 1998, added Subsection (b) to Section 29 of California Constitution Article XIII, allowing neighboring cities to enter into regional sales tax sharing agreements. This would stabilize revenues and end bidding wars for retailers. According to the State’s Legislative Analyst’s Office, Proposition 11 “provides another way of implementing sales tax revenue-sharing contracts. For Bradley-Burns revenues, contracts could be approved by a two-thirds vote of each affected jurisdiction’s governing body (a city council or board of supervisors.)”

1.4 The Parties believe that it is in the public interest to retain the operations of Fashion Nova at the Vernon and SFS Sites, and to do so in a cooperative, equitable manner, for the following reasons: (1) the continuous and collaborative operation of the Facilities will provide

significant public benefits to the Parties, in that the additional Local Sales Tax Revenues and employment opportunities to be generated by such activities represent a significant source of new and additional public revenue for the Parties, which may be used by each Party for the funding of necessary public services and facilities, including public safety services and facilities; (2) the Parties have further determined that the continuous and collaborative operation of the Facilities serves the additional public purpose of fostering a business and civic environment which may attract additional businesses and investment in each community due to the availability of the increased public and private services and economic activity resulting therefrom; and (3) by equitably sharing Local Sales Tax Revenues generated by Fashion Nova at the Vernon and SFS Sites, this Agreement avoids a potentially destructive competition between Vernon and Santa Fe Springs to capture all potential tax revenues for themselves. This Agreement is in accord with applicable state and federal laws and is in the vital and best interests of the Parties and the communities they serve. It will serve the health, safety, and general welfare of both the City of Vernon and Santa Fe Springs, and their residents. It will further serve to strengthen the Cities' land use and social structures, and alleviate economic and physical blight within the Cities.

1.5 Based upon the foregoing understandings, the specific purposes of this Agreement are (1) to cause all Fashion Nova sales at both the Vernon and SFS Sites that generate Local Sales Tax Revenues to be allocated to Vernon and Santa Fe Springs in accordance with the terms of this Agreement. By so splitting the Local Sales Tax Revenues, the Parties will be advancing the following principles: (1) the achievement of equitable revenue allocations that will remove fiscal consideration from land use decisions; and (2) the development of a revenue distribution system between the Cities which encourages mutual cooperation on economic development projects having an impact on both Cities. With respect to (2), the Parties find that the tax sharing arrangements herein have limited impacts only upon their mutual jurisdictions, with no impacts upon the sales taxes of other jurisdictions and/or no impacts upon regional competition amongst other jurisdictions for tax-generating businesses because the revenues in issue derive from sales negotiated only at the Vernon and SFS Facilities.

1.6 This Agreement has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations), and the environmental guidelines of the respective Parties. This Agreement is not a "project" for purposes of CEQA, as that term is defined by Guidelines § 15378, because this Agreement is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per § 15378(b)(5) of the Guidelines. Should the revenues allocated under this Agreement be used to fund discretionary projects of either Party, that Party will undertake the required CEQA review of those projects when their details are known. It would be unduly speculative to undertake such CEQA review now.

ARTICLE 2. DEFINITIONS.

2.1 Definitions. Unless the context otherwise requires, the terms defined in this Article 2 shall for all purpose hereto, and of any amendment hereof, and of any opinion or report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

2.1.1 **“Business Day”** means a day which is not a Saturday, Sunday, or legal holiday on which banking institutions in the State or the Cities are closed.

2.1.2 **“CDTFA”** means the California Department of Tax and Fee Administration, and any successor agency.

2.1.3 **“Claims and Liabilities”** bears the meaning attributed to it in Section 5.2 hereof.

2.1.4 **“Data and Documentation”** means any and all sales and use tax returns, bills, invoices, schedules, vouchers, receipts, cancelled checks, statements, and other documents reasonably required by Vernon or Santa Fe Springs to evidence Local Sales Tax Revenues paid by a Retail Sales Office to Vernon or Santa Fe Springs.

2.1.5 **“Effective Date”** means July 1, 2021.

2.1.6 **“Fiscal Year”** means July 1 through June 30.

2.1.7 **“Fiscal Quarter”** means one calendar year quarter, commencing on January 1, April 1, July 1, or October 1, and ending on, as applicable, the immediately following March 31st, June 30th, September 30th, or December 31st, respectively. As an example, the Fiscal Quarter commencing January 1st shall end on the immediately following March 31st, the Fiscal Quarter commencing on April 1st shall end on the immediately following June 30th, and so on.

2.1.8 **“Payment Period”** means each three-month period (quarterly) occurring four times within the Fiscal Year from (1) July 1 through September 30 and (2) October 1 through December 31 and (3) January 1 through March 31 and (4) April 1 through June 30.

2.1.9 **“Indemnity Costs”** means all costs of defending or prosecuting suits or claims, including reasonable and actual attorneys’ fees and expert witness fees incurred in enforcing, perfecting and executing a judgment or award arising from, or related to, either the enforcement or performance of this Agreement or suits/claims relating to, or arising from, the subject matter of this Agreement. Indemnity Costs include, without limitation, attorneys’, consultants’ and experts’ fees, costs and expenses incurred in the following: (i) post-judgment motions and appeals, (ii) contempt proceedings, (iii) administrative proceedings, (iv) garnishment, levy and debtor and third party examination; (v) discovery; and (vi) bankruptcy litigation.

2.1.10 **“SFS Share”** means fifty percent (50%) of the Local Sales Tax Revenue generated by Fashion Nova and actually received by Santa Fe Springs and fifty percent (50%) of the Local Sales Tax Revenue generated by Fashion Nova and actually received by Vernon and payable pursuant to Section 3.2.

2.1.11 **“Local Sales Tax Revenues”** means that portion of the Sales and Use Tax, if any, paid by Fashion Nova upon taxable sales and uses attributable to the operations of Retail Sales Office (1% of gross sales) and allocated and actually paid to, and received by, Vernon and Santa Fe Springs under the Uniform Local Sales and Use Tax Law (Part 1.5, Division 2 of the California Revenue and Taxation Code). Local Sales Tax Revenues shall not include (i) Penalty

Assessments; (ii) any Sales Tax levied by, collected for, or allocated to the State of California, the County of Los Angeles, a district, or any entity (including an allocation to a statewide or countywide pool) other than Vernon or Santa Fe Springs, as applicable; (iii) any administrative fee charged by the CDTFA; (iv) any Sales or Use Tax subject to any sharing, rebate, offset, or other charge imposed pursuant to any applicable provision of federal, state, or local (except the Cities') law, rule, or regulation; (v) any Sales Tax attributable to any transaction not consummated within the Term; (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 and/or pledged to a specific use other than for deposit into or payment from the Cities' general funds, including retroactively, or (vii) any tax levied under the Transaction and Use Tax Law, (Part 1.6, Division 2 of the California Revenue and Taxation Code).

The California Legislature might provide for the payment to Vernon or Santa Fe Springs of some form of revenues for the purpose of offsetting any losses the City has suffered in Local Sales and Use Tax Revenues resulting from the enactment of recent State legislation. The Cities agree that, should the California Legislature provide for such offsetting revenues, then any offsetting revenues which are (i) intended to offset the loss of Sales Tax revenues to Vernon or Santa Fe Springs as a result of changes in law; and (ii) actually received by Vernon or Santa Fe Springs; and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to Sales Tax revenues received by California municipalities, will be deemed to be "Local Sales Tax Revenues" within the meaning of this Agreement.

2.1.12 **"Penalty Assessments"** means penalties, assessments, collection costs, and other costs, fees, or charges resulting from late or delinquent payments of Sales or Use Tax and which are levied, assessed, or otherwise collected from Fashion Nova.

2.1.13 **"Retail Sales"** means all sales of tangible personal property to any person or entity which is subject to the Bradley-Burns Sales and Use Tax Law and which generates Local Sales Tax Revenues, of which cities are entitled to 1%.

2.1.14 **"Retail Sales Office"** means any form of entity affiliated with Fashion Nova that maintains a retail sales operation, within Cities and at which Retail Sales transactions are consummated pursuant to the Sales and Use Tax Law. Sales from distribution centers, warehouses, field sales offices, and other e-commerce sales are intended to be included as appropriate under the Sales and Use Tax Law.

2.1.15 **"Sales and Use Tax Law"** means (i) Part 1.5 of Division 2 of the California Revenue and Taxation Code (Bradley-Burns Sales and Use Tax), commencing with Section 7200, and any successor law thereto; (ii) any legislation allowing Vernon or Santa Fe Springs to levy any form of sales and use tax on the operations of Fashion Nova other than the Transactions and Use Tax Law, Part 1.6 of Division 2 of the California Revenue and Taxation Code, commencing with Section 7251; and (iii) regulations of the CDTFA and other binding rules and interpretations relating to (i) and (ii) hereof.

2.1.16 **"Sales Tax"** means all sales and use taxes levied under the authority of the California Sales and Use Tax Law, excluding any Sales Tax that is to be refunded to Fashion Nova

because of an overpayment of Sales Tax.

2.1.17 “**Term**” shall mean the Term of this Agreement, which is retroactively effective from the Effective Date and continues in perpetuity unless terminated sooner pursuant to the provisions of this Agreement, subject to any rights or remedies available to a Party to earlier terminate this Agreement upon the Default of the other Party. The Term of this Agreement shall conclude at the end of the Fiscal Quarter in which Fashion Nova ceased to operate one or both Sites unless Fashion Nova begins operating at an alternate site in the City or Cities in which it ceased to operate one or both of the original Sites.

2.1.18 “**Vernon Share**” means fifty percent (50%) of the Local Sales Tax Revenue generated by Fashion Nova and actually received by Vernon and fifty percent (50%) of the Local Sales Tax Revenue generated by Fashion Nova and actually received by Santa Fe Springs and payable pursuant to Section 3.2.

ARTICLE 3. GENERAL TERMS.

3.1 Sharing of the Tax Revenues. On and after the Effective Date of this Agreement and continuing for the Term hereof, the Parties shall share the Sales Tax Revenues generated by Fashion Nova in each Party’s jurisdiction as follows: fifty percent (50%) to Vernon and fifty percent (50%) to Santa Fe Springs. The percentage attributable to Vernon is referred to as the “Vernon Share” and the percentage attributable to Santa Fe Springs is referred to as the “SFS Share.”

3.2 Procedures for Distributing Shares of Sales Tax Revenues. Each City shall retain all revenues qualifying as its Share. Vernon shall pay to Santa Fe Springs its SFS Share, along with an accounting and all Data and Documentation of how such Share was calculated. Santa Fe Springs shall pay to Vernon its Vernon Share, along with an accounting and all Data and Documentation of how such Share was calculated. Payments shall be twice a year:

3.2.1 *Payment of First Share in 2022 Fiscal Year.* Notwithstanding the Effective Date of this Agreement, each City shall make the first payment to the other City under this Agreement for the period of July 1, 2021 through December 31, 2021 and no earlier, which shall be payable to on April 15, 2022 or earlier based on the availability of remittance data from the CDTFA and Cities’ sales tax analytics firm(s). Remittance will include reported sales tax information.

3.2.2 *Conditions Precedent to Payment of Sales Tax Share.* Each City’s obligations under this Section 3.2 apply to each Payment Period to Period as to sales tax receipts in that period basis and, for each Payment Period within the Term, upon the satisfaction of the following conditions precedent:

- a. The paying City’s receipt and reasonable approval of all Data and Documentation for the subject Fashion Nova operations;
- b. The receiving City having, for the entirety of such Payment period, fulfilled its material obligations under this Agreement; and

- c. That no other changes in law or Enforced Delays (as defined below) have occurred such that the cooperative intent and purposes of this Agreement are materially frustrated.

3.2.3 *Withholding Payment of Share for Indemnification.* Either City may deduct from any payment (i) amounts in dispute hereunder; or (ii) amounts necessary to compensate for any losses, costs, liabilities, or damages suffered by City, including but not limited to those due to other City's failure to perform its indemnity obligations hereunder. In the event that any claim is made by a third party, the amount or validity of which is disputed, City may withhold from any payment due, an amount sufficient to cover the claim. Said withheld monies will be held in a separate account accruing interest at the same rate as withholding party's other investments (without liability because of such withholding or interest rate). The failure of a Party to exercise such right to deduct or to withhold shall not, however, affect the obligations of the other Party to insure, indemnify, and protect as elsewhere provided herein.

3.2.4 *Recapture of Share.* If at any time during or after the Term of this Agreement, the CDTFA determines that all or any portion of the Local Sales Tax Revenues received by the Cities were improperly allocated and/or paid to the Cities (an "improper allocation"), and if CDTFA requires repayment of, offsets against future Sales Tax payments, or otherwise recaptures from the Cities those improperly allocated and/or paid Local Sales Tax Revenues, then the unlawfully benefitted Party shall, within thirty (30) calendar days after written demand from the other Party, repay all of its Share (or applicable portions thereof) theretofore paid which are attributable to such repaid, offset, or recaptured Local Sales Tax Revenues. If a Party fails to make such repayment within thirty (30) calendar days after the written demand, then such obligation shall accrue interest from the date of original demand at the rate imposed by California Code of Civil Procedure 3289, subdivision (b), compounded monthly, until paid.

3.3 Changes in Law; No Guaranty of Availability of Certain Funding Sources. Changes in law that materially undermine the intent and purposes of this Agreement may be a basis for termination or renegotiation hereof.

3.3.1 Both Cities acknowledge that the California Legislature previously adopted legislation commonly known as the "triple-flip" which diverted to the State of California Sales and Use Tax Revenue which would otherwise be payable to local agencies pursuant to the Sales Tax and Use Tax Law. The Cities acknowledge that it is possible that the legislation described above, or some alternative legislation (whether or not similar to the "triple flip"), may be enacted and effective during one or more subsequent years during the Term hereof and may materially and negatively impact the amount of Local Sales Tax Revenues generated by Fashion Nova and, accordingly, the available amount of Local Sales Tax Revenues.

3.3.2 If future actions of the California Legislature with respect to the allocation of Local Sales Taxes will detrimentally impact Sales Taxes, then either City may notify the other in writing that it wishes to initiate good faith negotiations to determine whether the tax sharing arrangements or other terms set forth in this Agreement can be amended such that both Cities can achieve a satisfactory and equitable means of continuing a tax split of Local Sales Tax Revenues. Such negotiations will persist, in good faith and without material interruption, for a period of up

to sixty (60) Business Days. Terms of negotiation shall include possible means of modifying the terms of this Agreement to reasonably address shortfalls in Local Sales and Use Tax Revenues as a result of new State legislation.

Each City hereby agrees to indemnify, defend, and hold harmless the other, its elected officials, officers, employees, agents, representatives, and successors from and against any and all costs, expenses, damages, claims, and liabilities, including reasonable and actual attorney fees, foreseeable or unforeseeable, directly or indirectly, arising from any application or impact of legislation (whether or not similar to the “triple flip”) upon the terms, conditions or implementation of this Agreement.

3.4 Audit of Books and Records. Either Party shall, upon no less than five (5) Business Days prior written request from the other Party, make the entirety of its books, records, and Data and Documentation relating to the calculating and determination of that Party’s rights and obligations under this Agreement available at no cost to the requesting Party and/or its designees (including its accountants and/or attorneys). Nothing herein shall be deemed to abridge or constitute a waiver of any Party’s evidentiary rights and privileges arising pursuant to any provision of law, hereof or as otherwise ordered by any court of competent jurisdiction. Each Party shall bear the costs of its own auditors, experts, and other consultants it may engage to complete its investigation of the other Party’s books and records hereof, or as otherwise ordered by the court, may be recovered as an item of litigation expense pursuant to Section 5.2.

ARTICLE 4. DEFAULTS & ENFORCEMENT.

4.1 Event of Default. A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party (“**Defaulting Party**”) to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in “**Default**” under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within thirty (30) calendar days after the date of such notice (“**Cure Period**”). However, if such non-monetary breach or failure cannot be cured within such Cure Period, and if the Defaulting Party does each of the following:

- a. Notifies the Non-Defaulting Party in writing with a reasonable explanation why the asserted Default is not curable within the thirty (30) calendar day period;
- b. Notifies the Non-Defaulting Party of the Defaulting Party’s proposed cause of action to cure the Default;
- c. Promptly commences to cure the Default within the thirty (30) calendar day period;
- d. Makes periodic reports to the Non-Defaulting Party as to the progress of the cure; and

- e. Diligently prosecutes such cure to completion;

then the Defaulting Party shall not be deemed in breach of this Agreement.

4.2 Legal Actions.

4.2.1 *Institution of Legal Actions.* In addition to any other rights or remedies, and subject to the requirements of Sections 5.2 and 6.8, either Party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement, including the remedy of specific performance. Legal actions must be instituted and maintained in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

4.2.2 *Applicable Law & Forum.* The laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

4.2.3 *Acceptance of Service of Process.* In the event that any legal action is commenced by a City, service of process on the other City shall be made by personal service upon the City Clerk.

4.3 Rights & Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its 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.

4.4 No Waiver. Except as otherwise provided in this Agreement, waiver by either Party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either Party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at another time. Delay or forbearance by either Party in exercising any remedy or right as to any Default shall not operate as a waiver of any Default or of any rights or remedies, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

4.5 Termination. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any Default, or fail to diligently pursue such cure as prescribed above, the Non-Defaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and any other agreements related thereto (“**Termination Notice**”). The Termination Notice shall state that the Non-Defaulting Party will elect to terminate this Agreement and such other agreements as the Non-Defaulting Party elects to terminate within thirty (30) calendar days and state the reasons therefor (including a copy of any specific charges of Default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Non-Defaulting Party’s election to terminate Agreements will be waived only if (i) the Defaulting Party fully and completely cures all Defaults

prior to the date of termination or (ii) pursuant to Section 4.5.1, below.

4.5.1 Except as otherwise provided herein, upon such termination all executory obligations under this Agreement that accrue or arise subsequent to the date of termination shall also terminate, but obligations that have accrued or arising prior to such termination shall remain in full force and effect. Without limiting the generality of the foregoing, no termination of this Agreement shall operate to release or discharge either Party from any obligation to refund to the other Party any amount of Remainder Sales Tax that was overpaid to a Party. In addition, in the event that a court of competent jurisdiction determines that any amounts of SFS Share or Vernon were improperly received by Santa Fe Springs or Vernon, respectively, and orders Santa Fe Springs or Vernon to pay such improperly received funds as damages to a third party, and Santa Fe Springs or Vernon actually received the improper SFS or Vernon Share monies, the recipient City shall repay such SFS Share or Vernon Share to the other Party or to such third party as ordered by the court within thirty (30) calendar days after written demand thereof.

4.6 Enforced Delays; Extension of Times of Performance. Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, 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; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the “public enemy”; epidemics; pandemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions (other than those of the Party obliged to act under this Agreement) or priority litigation; unusually severe weather; inability to secure necessary labor, materials, or tools; acts of the other Party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of a City shall not excuse performance by that City); or any other causes beyond the reasonable control or without the fault of the Party claiming an extension of time to perform. In the event of such a delay (herein “**Enforced Delay**”), the Party delayed shall continue to exercise reasonable diligence to minimize the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the Enforced Delay, provided the Party claiming such extension notifies the other Party within ten (10) calendar days of the commencement of the Enforced Delay. Failure to provide such notice shall constitute a waiver of the Enforced Delay claim. Inability to negotiate in good faith shall not be considered as events or causes beyond the control of either City, nor entitle a City to an extension of time to perform. Times of performance under this Agreement may also be extended by mutual written agreement by the Cities.

The Parties hereto expressly acknowledge that changes in either general economic conditions or changes in the economic assumptions of either of them which may have provided a basis for entering into this Agreement, and which occur at any time after the execution of this Agreement, are not Enforced Delays and do not provide either Party grounds for asserting the existence of an Enforced Delay or excuse the timely performance of any covenant or undertaking under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions, or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement, but that such inconvenience or hardship is not an Enforced Delay and does not excuse the timely performance by such Party of its obligations under this Agreement.

ARTICLE 5. REPRESENTATIONS & WARRANTIES; INDEMNITIES & TRANSFERS

5.1 Representations and Warranties. All of the following representations and warranties are made according to the Cities' actual knowledge as of the Effective Date, without undertaking any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

5.1.1 Each City is a California municipal corporation and has full legal right, power, and authority to enter into this Agreement and to carry out and consummate all transactions contemplated hereby and, thereby, by proper action. Each City Council has duly authorized the execution and delivery of this Agreement.

5.1.2 The representatives of each City executing this Agreement are fully authorized to execute the same pursuant to official action taken by each City Council.

5.1.3 To the extent this Agreement imposes a duty or obligation upon a City, the City will comply with the terms, intents, and purposes of this Agreement.

5.1.4 The execution and delivery of this Agreement, the consummation of the contemplated transactions by each City and each City's fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or Default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulations, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract, or other agreement or instrument to which either City is a Party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of either City, which conflict, violation, breach, Default, lien, charge, or encumbrance would materially and adversely affect the consummation by either City of the transactions contemplated by this Agreement.

5.1.5 There is no action, suit, proceeding, inquiry, or investigation before or by any court or federal, state, municipal, or other governmental authority pending, or, to the knowledge of either City, threatened against or affecting either City or its interests, which, if determined adversely to a City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by, or the validity of, this Agreement.

5.2 Indemnification & Defense of Actions; Allocation of Defense Costs. Each City shall indemnify, hold harmless, save, and defend the other City, its officials, agents, volunteers, and employees from and against any and all claims, demands, damages, causes of action, liens, liabilities, losses, costs, and expenses, including reasonable and actual attorney's fees, arising out of or in connection with this Agreement (collectively hereunder, "**Claims and Liabilities**"). The foregoing shall not apply to Claims or Liabilities caused by the sole negligence of one City or its officers, agents, volunteers, or employees.

5.2.1 *Costs of City Suits Against Each Other.* If, notwithstanding the above paragraph in Section 5.2, one City brings legal action related to Claims or Liabilities against the other City, all related Indemnity Costs shall be allocated between the two Cities as described in

Section 6.8 below.

5.2.2 *Defense of CDTFA Proceedings—Sharing of Costs.* In the event the CDTFA questions the allocation of Local Sales Tax Revenues to either City or determines that there has been an improper allocation to either City, the Parties shall reasonably cooperate and use reasonable, good faith efforts to pursue available administrative remedies and to defend against the CDTFA's position. For purpose of this paragraph, administrative proceedings include all CDTFA meetings, conferences, and appeals to CDTFA decisionmakers, including its administrative law judges. Each Party shall cooperate fully with the other Party and its attorneys, and shall have the right to be present at and participate in all CDTFA Administrative proceedings.

5.2.4 Survival. All indemnity provisions set forth in this Agreement shall survive termination and/or expiration of this Agreement for any reason.

5.3 Restrictions on Transfer. Neither Party hereto shall transfer or assign its rights, obligations, or interests under this Agreement, directly or indirectly, voluntarily or by operation of law, without the prior written approval of non-transferring Party. Such consent shall not be unreasonably withheld.

ARTICLE 6. MISCELLANEOUS

6.1 Amendment of Agreement. At any time, Vernon and Santa Fe Springs may determine that this Agreement should be amended for their mutual benefit, or for any other reason, including an amendment to induce Fashion Nova to maintain its operations in the Cities. Any such amendment to this Agreement shall only be by written agreement between the Parties. Vernon and Santa Fe Springs agree to consider reasonable requests for amendments to this Agreement which may be made by the other Party.

6.2 Execution in Counterparts; Electronic Signatures. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument. Signatures may be given by emailed pdf or other electronic means with the same force as original, wet signatures.

6.3 Business Days. Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such act or thing is done or exists on the next date which is a Business Day.

6.4 Consent. Whenever consent or approval of any Party is required under this Agreement, that Party shall not unreasonably withhold, delay, or condition such consent or approval unless a different standard is otherwise provided by a specific provision of this Agreement.

6.5 Notices. Any notices which either Party may desire to give to the other Party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mail by the United States Postal Service, certified mail, postage prepaid, return receipt requested, addressed to the address of the

Party as set forth below or at any other address as that Party may later designate by notice:

City of Vernon
Attention: Carlos Fandino, City Administrator
4305 Santa Fe Avenue
Vernon, CA 90058

City of Santa Fe Springs
Attention: Raymond R. Cruz, City Manager
11710 E. Telegraph Road
Santa Fe Springs, CA 90670

6.6 Nonliability of Officials and Employees. No elected or appointed official, contractor, consultant, attorney or employee of either Party shall be personally liable to the other Party or any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in this Agreement, in the event of any Default or breach by either Party, or for any amount which may become due to a Party or to its successors or assignees, or on any obligations arising under this Agreement.

6.7 Entire Agreement. This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, in conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals, and the like are superseded by this Agreement.

6.8 Attorney's Fees. In the event of an arbitration, action or suit by a Party hereto against the other Party by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement then the prevailing Party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to recover from the other Party all costs and expenses of suit or claim, including actual and reasonable attorneys' fees and expert witness fees incurred in enforcing, perfecting and executing such judgment or award (collectively, the "Costs"). Any final judgment, order or award entered in such action or dispute shall provide for the recovery of the Costs. For the purposes of this Section 6.8, the Costs shall include, without implied limitation, reasonable and actual attorneys' and experts' fees, costs and expenses incurred as to: (i) post-judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. This Section shall survive any termination of this Agreement.

6.9 Interpretation. Vernon and Santa Fe Springs acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting, and that both Parties have been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against its drafter shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any

extrinsic evidence not in conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties with respect to any ambiguities in this Agreement.

6.10 Third Party Beneficiaries. The performance of the respective obligations of the Parties are not intended to benefit any party other than the Cities. Except as provided otherwise, no person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement.

6.11 Severability. The Parties declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition, or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition, or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

6.12 Further Acts and Releases. The Cities each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

6.13 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee, or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

**SIGNATURE PAGE TO THE
SALES TAX SHARING AGREEMENT
[FASHION NOVA]**

CITY OF VERNON, a California charter City and California municipal corporation

By: _____
Carlos Fandino, City Administrator

ATTEST:

By: _____
Lisa Pope, City Clerk

APPROVED AS TO FORM:

By: _____
Zaynah N. Moussa,
Interim City Attorney

CITY OF SANTA FE SPRINGS, a California municipal corporation

By: _____
Raymond R. Cruz, City Manager

ATTEST:

By: _____
Janet Martinez, City Clerk

APPROVED AS TO FORM:

By: _____
Ivy M. Tsai, City Attorney