

**RESOLUTION NO. 2011-141**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AUTHORIZING THE CITY MANAGER TO EXECUTE A FEE DEFERRAL  
AGREEMENT WITH SACRAMENTO MOTOR CARS, LLC  
D.B.A. MAZDA OF ELK GROVE**

**WHEREAS**, pursuant to City of Elk Grove Resolution No. 13-2008 (the "Resolution"), the City has approved a Fee Deferral Program; and

**WHEREAS**, the City Council established certain standards terms and conditions for approved fee deferrals; and

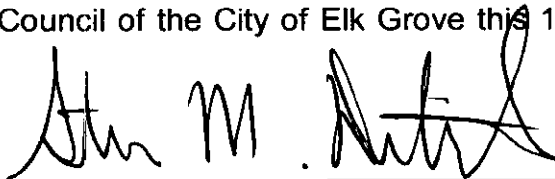
**WHEREAS**, Sacramento Motor Cars, LLC d.b.a. Mazda of Elk Grove has requested alternative terms and conditions; and

**WHEREAS**, the requested alternative would set the rates for certain development impact fees due for the project at the rates applicable at the time of permit issuance with no further inflationary or other adjustments; and

**WHEREAS**, the Council finds that fixing these fee rates is in the interest of economic development as the proposed project will generate additional sales tax revenue within the City.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute a Fee Deferral Agreement, in substantially the form attached as Exhibit A, with Sacramento Motor Cars, LLC d.b.a. Mazda of Elk Grove.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 13<sup>th</sup> day of July 2011.



STEVEN M. DETRICK, MAYOR of the  
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

EXHIBIT A



**CITY OF ELK GROVE**

**AGREEMENT FOR DEFERRAL OF CERTAIN**

**CITY IMPACT FEES**

**Mazda Dealership**

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2011 by and between the City of Elk Grove, (the "City"), a municipal corporation of the State of California and Sacramento Motor Cars, LLC d.b.a. Mazda of Elk Grove (hereinafter "Company"), a California Limited Liability Company (hereinafter "Applicant").

**WHEREAS**, Applicant is developing property within the City of Elk Grove as identified in Exhibit A attached hereto by constructing thereon its project known as Mazda of Elk Grove Dealership (the "Project"); and

**WHEREAS**, Applicant has requested deferral of certain impact fees on said Project; and

**WHEREAS**, the City is agreeable to defer collection of a portion of certain impact fees under certain conditions;

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

Section 1. The City shall defer payment and collection of the Capital Facilities Fee, Very Low-Income Housing Trust Fund Fee, the Citywide Roadway Fee, and the Citywide Fire Fee beyond the time of issuance of a building permit for the construction of the Project consistent with the terms and conditions of this Agreement.

Section 2. The City Manager has determined that the deferral of the fees set forth in this Agreement will not adversely impact any approved or programmed capital facility.

Section 3. Applicant may defer payment of the following sums (check box  if applicable):

- \$ 6,085.45 due for the Capital Facilities Fee;
- \$ 7,633.55 due for the Very Low-Income Housing Trust Fund Fee;
- \$71,006.45 due for the Citywide Roadway Fee; and
- \$14,708.35 due for the Citywide Fire Fee.



**\$99,433.80** total due for all fees to be deferred.

These amounts represent one-hundred percent (100%) of the total payable on each of said fees, together with appropriate administrative fees, for the issuance of a building permit for the Project. The amounts are not subject to annual inflationary and other increases, with the exception of the Citywide Fire Fee. The amount due upon payment for the Citywide Fire Fee will be based upon the corresponding fee rate due at the time of payment.

Section 4. Term of Agreement. The term of this agreement shall be five (5) years from the date of issuance of the following building or improvement permits:

Permit #10-0812

Applicant guarantees that it will pay the City the Outstanding Balance Due on the deferred building permit fees (hereinafter "OBD") upon either the request for a Final Inspection for each building included in the Project or a date that is no more than sixty (60) months from the date of issuance of each permit issued subject to this agreement.

Section 5. Payment Terms and Conditions. In the event that fees are deferred beyond the Final Inspection, Applicant shall pay one-eighth (1/8) of the OBD per quarter commencing with the end of the first quarter after the third anniversary date of each building or improvement permit subject to this agreement. Upon the third anniversary date, the OBD will be based upon the fee rates in effect at that time and will not be subject to any further adjustment. In the event the applicant does not make a payment when due, the entire OBD will be immediately due and payable.

Section 6. Security. To further guarantee payment of the OBD, Applicant has provided (check box  of all that are applicable):

- (1) Assigned passbook or certificate of deposit;
- (2) Irrevocable letter of credit;
- (3) Surety bond;
- (4) Lien against a property;
- (5) Reservation of funds within the escrow account of the senior lender; or
- (5) Negotiable securities, if approved by the City Council,

("Payment Guarantee") in a form satisfactory to the City Manager, or City Manager's designee, in the amount of **\$99,433.80**. The City shall use the Payment Guarantee to pay the OBD if payment is not received by the City on or before the termination of this agreement. The expiry date of any security provided to City under this section shall be no earlier than 30 days after the termination of this agreement.

Section 7. Interest. The Applicant is a "Targeted Company" as defined by Section 16.120.080 (c) of the Elk Grove Municipal Code by its creation of 30 new full-time jobs from development of the Project. Thus, the Applicant shall not be required to pay interest on the OBD at any point during the term of this agreement.



Section 8. Nothing herein shall relieve Applicant from the obligation to pay additional impact fees that may become due in the future in accordance with the provisions of the Elk Grove Municipal Code or City Ordinances.

Section 9. Any notice or other communication to be given to either party pursuant to this Agreement shall be given by delivering same in writing to the parties at the addresses set forth below:

Applicant: John Driebe  
Sacramento Motor Cars, LLC d.b.a. Mazda of Elk Grove  
8590 Laguna Grove Drive  
Elk Grove, CA 95757

City: Assistant City Manager – Development Services  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758

Such notice shall be deemed given when deposited into the United States mail, postage prepaid, addressed to the parties at the addresses above. Nothing herein shall preclude the giving of personal notice.

Section 10. This Agreement shall terminate upon the payment of the deferred impact fees by Applicant.

Section 11. The City, by establishing the procedures and entering into this Agreement, does not warrant the Agreement against legal challenge or warrant its enforceability. Applicant specifically waives any defense against the enforcement of its obligation hereunder to the extent such defense is related in whole or part to the validity of this Agreement. Should this Agreement or any provision be found to be invalid or unenforceable, the OBD shall become immediately thereon due and payable.

Section 12. Modifications or amendments affecting the terms and conditions contained in this Agreement shall be in writing and executed by all parties.

Section 13. The Applicant, by execution of this Agreement, specifically agrees to assume the defense of, indemnify, and hold harmless the City and its officers, employees, consultants, and agents from and against all liabilities, actions, damages, claims, losses or expenses of every type and description, including attorneys' and consultants' fees and expenses (collectively "**Liabilities**"), to which they may be subjected or put, by reason of, or resulting from this Agreement, except

AGREEMENT FOR DEFERRAL OF CERTAIN CITY IMPACT FEES



Liabilities arising from the sole negligence or willful misconduct of the City. This indemnification shall extend to Liabilities occurring after this Agreement is terminated as well as while it is in force.

Section 14. This Agreement constitutes the entire agreement and understanding between the City and Applicant concerning the deferral of the payment of the above mentioned fees.

Section 15. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

**CITY OF ELK GROVE**

Dated: \_\_\_\_\_, 2011

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

Laura Gill, City Manager

**Approved as to form:**

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

Susan Cochran, City Attorney

**APPLICANT**

Sacramento Motor Cars, LLC d.b.a. Mazda of Elk Grove

Dated: \_\_\_\_\_, 2011

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

John Driebe, Member

**CERTIFICATION**  
**ELK GROVE CITY COUNCIL RESOLUTION NO. 2011-141**

STATE OF CALIFORNIA        )  
COUNTY OF SACRAMENTO    )       ss  
CITY OF ELK GROVE         )


*I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on July 13, 2011 by the following vote:*

**AYES :**        **COUNCILMEMBERS:**    *Detrick, Cooper, Davis, Hume*

**NOES:**        **COUNCILMEMBERS:**    *None*

**ABSTAIN :**   **COUNCILMEMBERS:**    *None*

**ABSENT:**     **COUNCILMEMBERS:**    *Scherman*

  
\_\_\_\_\_  
**Jason Lindgren, City Clerk**  
**City of Elk Grove, California**