

RESOLUTION NO. 2011-140

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE AN ECONOMIC INCENTIVE
AGREEMENT WITH SACRAMENTO MOTOR CARS, LLC D.B.A. MAZDA OF
ELK GROVE FOR A PERMANENT MAZDA DEALERSHIP
IN THE AMOUNT OF \$150,000**

WHEREAS, pursuant to City of Elk Grove Resolution No. 2009-189 (the "Resolution"), the City has approved an Economic Development Incentive Program; and

WHEREAS, the City Council established a budget for the Economic Development Fund with the adoption of the Fiscal Year 2011-12 Budget; and

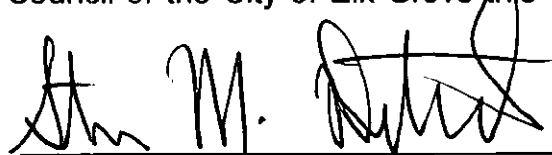
WHEREAS, Sacramento Motor Cars, LLC d.b.a. Mazda of Elk Grove has requested an Economic Development Incentive amount of \$150,000; and

WHEREAS, the proposed project is anticipated to provide an economic development benefit to the City by generating new sales tax revenues in excess of the incentive amount; and

WHEREAS, the current unencumbered balance of the Economic Development Fund is sufficient to fund the requested incentive amount.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute an Economic Incentive Agreement, in substantially the form attached as Exhibit A, with Sacramento Motor Cars, LLC d.b.a. Mazda of Elk Grove in the amount of \$150,000.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 13th 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

ECONOMIC INCENTIVE AGREEMENT

Mazda of Elk Grove

This Economic Incentive Agreement ("Agreement") is entered into as of this ____ day of _____, 2011, by and between the City of Elk Grove, a municipal corporation (the "City") on the one hand, and Sacramento Motor Cars, LLC d.b.a. Mazda of Elk Grove, a California limited liability company (the "Applicant") on the other (collectively, the "Parties"), with reference to the following facts:

RECITALS

- A. WHEREAS, pursuant to Elk Grove City Resolution No. 2009-189 (the "Resolution"), the City has approved an Economic Development Incentive Program; and
- B. WHEREAS, pursuant to Elk Grove City Resolution No. 2011-___, the City Council has authorized the City Manager to enter into this Agreement with the Applicant; and
- C. WHEREAS, to promote economic development within the City, infuse new investment into the Elk Grove Automall, establish new sales tax-generating uses for the City, and provide new permanent jobs, the City has approved this Agreement with Mazda of Elk Grove on the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals and the following mutual covenants, agreements, conditions and representations, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- I. Incentive Payments. Subject to the limitations herein, the City agrees to provide an economic incentive payment (the "Incentive Amount") to Mazda of Elk Grove for the reasons stated above. The Incentive Amount shall not exceed a total of One Hundred Fifty Thousand dollars (\$150,000.00) and shall be distributed as set forth in Section 2 below.

2. Manner of Remittance. City shall pay the Incentive Amount as a reimbursement to Applicant in installments upon submittal of a reimbursement request (request form included as Attachment A) and approval of paid invoices for marketing, advertising, and promotional costs.

The Parties expressly acknowledge that this Agreement does not create a debt of the City to the Applicant, but rather an obligation to pay the Incentive Amount only upon City's receipt of paid invoices for said costs. With the exception of miscellaneous costs for the Grand Opening ceremony, reimbursement shall be made only for advertising and promotional costs that include the phrase "in the Elk Grove Automall" or otherwise clearly indicate that the Mazda of Elk Grove dealership is within the Elk Grove Automall. All submitted invoices shall be accompanied by either a copy of the advertisement, a script of the advertisement, a screen shot of the advertisement, or some other descriptive document that details the content of the advertisement. In the event of a dispute over whether an expenditure by Applicant qualifies for reimbursement, the City Manager shall make the final determination on the eligibility of the expenditure.

3. Timing of Payments. Applicant shall submit paid invoices, along with the advertisement content as described in Section 2 above, for reimbursement on a monthly basis for expenditures occurring during FY 2011-12. All invoices must be submitted within 30 days of the close of each month. Invoices shall be reviewed by City staff and reimbursement payments shall be made within 30 days of the City's receipt of a request for reimbursement. In no event shall reimbursements exceed the total amount payable as identified in Section 2. Reimbursements shall not be issued for any expenditures made after June 30, 2012.

4. Length of Term. This Agreement shall apply to costs incurred during the remainder of Fiscal Year 2011-12.

5. Prevailing Wage. Notwithstanding the City's agreement to reimburse Applicant for certain advertising and promotional costs following Applicant's construction of a new dealership facility at the Elk Grove Automall, the parties agree that such construction project shall be wholly undertaken by Applicant rather than by the City and that the City shall award no contracts for or pertaining to the construction of such new dealership facility. Applicant is fully aware of the provisions of Labor Code section 1720 et seq. regarding payment of prevailing wages in connection with public works and has consulted with its own legal counsel regarding such wage issue. Applicant's execution of this Agreement is an acknowledgment that such independent advice and counsel has been obtained and relied on in executing this Agreement and accepting the benefits under it. Neither the City nor any of its employees, agents, or representatives have rendered opinions to Applicant respecting the applicability of Labor Code section 1720 et seq. to Applicant's dealership construction project, and Applicant has not relied on any such representation in entering into this Agreement. In the event any claim of any kind or nature based on Labor Code section 1720 et seq. (including section 1781) is brought or made against the City in connection with this Agreement or the subject dealership construction project, Applicant shall be obligated to defend and indemnify the City with respect to such claim in accordance with paragraph 6, below.

6. Indemnity Obligation. Applicant agrees to protect, defend (with legal

counsel acceptable to the City), indemnify and hold harmless the City, its council members, officers, agents, independent contractors and employees from any and all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys' fees and court costs), injuries and liabilities of every kind arising out of that the execution and performance of this Agreement including but not limited to whether the benefits conferred by the City under this Agreement create a public work for prevailing wage purposes thereby requiring the payment of prevailing wages, and all claims challenging the legality, constitutionality, or enforceability of this Agreement, including but not limited to the City's authority to pay the Incentive Amount. This section shall apply regardless of whether or not the claim, damage, penalty, loss, cost, expense, injury and/or liability complained of arises out of or relates in any way to any negligence on the part of the City. The City's rights of indemnity, as expressly set forth in this Agreement, shall not depend upon the actual payment of any claim, damage, penalty, loss, cost, expense (including reasonable attorneys' fees and court costs), injury or liability sustained by the Applicant and/or its contractors, subcontractors, agents and/or employees. In the event that the City tenders the defense and indemnification of a claim contemplated by this Agreement to the Applicant and/or to his/her/its contractors, subcontractors, agents and/or employees, the City shall be entitled to actively supervise the claim and/or the defense of the same, shall be authorized to select and retain its own separate, independent counsel, at Applicant's and/or his/her/its contractors, subcontractors, agents and/or employees' expense, as necessary, which decision shall be made solely and exclusively by the City, and the City must consent to the disposition of any such claim, including but not limited to, the settlement of any such claim.

7. Authority to Execute Agreement. Each individual signing this Agreement represents and warrants that he or she has full authority to execute the same on behalf of the Party on whose behalf he or she so signs, and that he or she is acting within the scope of his authority. Each individual signing this Agreement agrees to indemnify and hold harmless the other Party for loss, damage, liability, cost or expense (including reasonable attorneys' fees) arising out of any claims made by anyone that such authority to sign this Agreement does not exist.

8. Advice of Counsel. Each of the Parties hereto has received the advice of independent legal counsel prior to signing this Agreement. Each of the Parties hereto acknowledges that no other party or agent or attorney of any other party has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce the other Party to execute this Agreement.

9. Entire Agreement. It is expressly understood and agreed that this Agreement contains the entire agreement and understanding concerning the subject matter thereof, and supersedes and replaces all prior negotiations and agreements between the Parties, whether written or oral. It is expressly understood and agreed that there have been no promises, agreements, warranties or inducements, not herein expressed. The Parties acknowledge that they have read this Agreement and have executed it without relying upon any statements, representations, or warranties, whether written or oral, not expressly set forth herein.

10. Governing Law. All questions with respect to the construction of this Agreement and the rights and liabilities of the Parties hereto shall be governed by the laws of the State of California.

11. Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments, including, but not limited to, escrow instructions, and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

12. Captions. Sections, titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference and shall in no way be construed to define, limit or extend the scope of this Agreement or the intent of any of its provisions.

13. Amendment. This Agreement shall not be amended except by a written instrument signed by the Parties or their respective successors and assigns.

14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

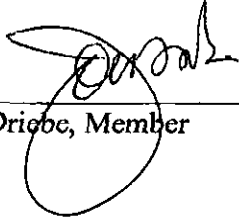
15. Severability. If any provision of this Agreement or the application thereof to any person or entity is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Applicant:

Sacramento Motor Cars, LLC
d.b.a. Mazda of Elk Grove, a
California limited liability company

By:



John Driebe, Member

The City:

The City of Elk Grove, a municipal
corporation

By:

Laura S. Gill, City Manager

Approved as to Form:

By:

Susan Cochran, City Attorney

Attest:

By:

Jason Lindgren, City Clerk

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2011-140**

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

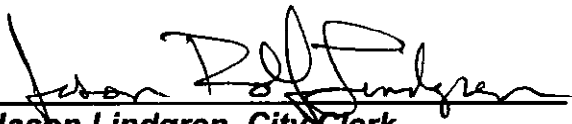
I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on July 13, 2011 by the following vote:

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

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN : **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *Scherman*



Jason Lindgren, City Clerk
City of Elk Grove, California