

BOARD OF TRUSTEES
ANAHEIM UNION HIGH SCHOOL DISTRICT
501 Crescent Way, P.O. Box 3520
Anaheim, California 92803-3520
www.auhsd.us

NOTICE OF SPECIAL MEETING

Date: January 16, 2009

To: Katherine H. Smith, P.O. Box 3520, Anaheim, CA 92803-3520
Thomas "Hoagy" Holguin, P.O. Box 3520, Anaheim, CA 92803-3520
Brian O'Neal, P.O. Box 3520, Anaheim, CA 92803-3520
Jordan Brandman, P.O. Box 3520, Anaheim, CA 92803-3520
Anna L. Piercy, P.O. Box 3520, Anaheim, CA 92803-3520

Orange County Register, 1771 S. Lewis, Anaheim, CA 92805
Anaheim Bulletin, 1771 S. Lewis, Anaheim, CA 92805
News Enterprise, P.O. Box 1010, Los Alamitos, CA 90720
Los Angeles Times, 1375 Sunflower, Costa Mesa, CA 92626
Event News, 9559 Valley View Street, Cypress, CA 90630
Excelsior, 523 N. Grand Avenue, Santa Ana, CA 92701

You are hereby notified that a special meeting of the
Board of Trustees of the Anaheim Union High School District
is called for

Thursday, the 22nd day of January 2009

in the District Board Room, 501 Crescent Way, Anaheim, California

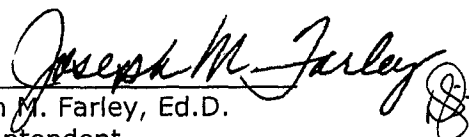
Open Session – 3:00 p.m.

Developer Fee Deferral Request

The Board of Trustees expressed an interest in deferring the collection of school facilities impact fees, on residential development, to support local economic stimulus efforts. School fees are typically paid to the district prior to issuance of building permits. A proposal from the Orange County Chapter of the Building Industry Association (BIA), was discussed at the board meeting of November 20, 2008. The proposal called for the deferral of collection of certain school fees until certificates of occupancy, or final inspections, are approved by the local municipality, mirroring recent action taken by the city of Anaheim. District staff members, working with attorneys with expertise on this topic, have developed the procedures, policies, agreements, and supportive resolution that would be required to implement such a change, all of which are included in the exhibit to this item and the one that follows. This agenda item permits the board to discuss the possible deferral of developer fees prior to considering action on a formal resolution on the matter.

Resolution No. 2008/09-F-01 Developer Fee Deferral

The Board of Trustees is requested to consider the adoption of Resolution No. 2008/09-F-01 for the deferral of developer fees.



Joseph M. Farley, Ed.D.
Superintendent

BOARD OF TRUSTEES
Special Meeting Agenda
Thursday, January 22, 2009
3:00 p.m.

Some items on the agenda of the Board of Trustees' meeting include exhibits of supportive and/or background information. These items may be inspected in the superintendent's office of the Anaheim Union High School District, at 501 Crescent Way in Anaheim, California. The office is open from 7:30 a.m. to 5:00 p.m., Monday through Friday, and is closed for most of the federal and local holidays. These materials are also posted with the meeting agenda on the district web site, www.auhsd.us, at the same time that they are distributed to the Board of Trustees. Meetings are recorded for use in the official minutes.

- 1. CALL TO ORDER – ROLL CALL** **ACTION ITEM**
- 2. ADOPTION OF AGENDA** **ACTION ITEM**
- 3. PLEDGE OF ALLEGIANCE**

Board President Katherine H. Smith will lead the Pledge of Allegiance to the Flag of the United States of America.

- 4. PUBLIC COMMENTS, OPEN SESSION ITEM** **INFORMATION ITEM**

Opportunities for public comments occur at the beginning of each agenda item and at this time for items not on the agenda. Persons wishing to address the Board of Trustees should complete a speaker request form, available on the information table, at the back of the room, and submit it to the executive assistant prior to the meeting. Each speaker is limited to a maximum of five minutes; each topic or item is limited to a total of 20 minutes. Board members cannot immediately respond to public comments, as stated on the speaker request form.

- 5. ITEMS OF BUSINESS**

- 5.1 Developer Fee Deferral Request** **INFORMATION ITEM**

The Board of Trustees expressed an interest in deferring the collection of school facilities impact fees, on residential development, to support local economic stimulus efforts. School fees are typically paid to the district prior to issuance of building permits. A proposal from the Orange County Chapter of the Building Industry Association (BIA), was discussed at the board meeting of November 20, 2008. The proposal called for the deferral of collection of certain school fees until certificates of occupancy, or final inspections, are approved by the local municipality, mirroring recent action taken by the city of Anaheim. District staff members, working with attorneys with expertise on this topic, have developed the procedures, policies, agreements, and supportive resolution that would be required to implement such a change, all of which are included in the exhibit to this item and the one that follows. This agenda item permits the board to discuss the possible deferral of developer fees prior to considering action on a formal resolution on the matter. **[EXHIBIT A]**

Recommendation:

Although this is an information item, requiring no formal action by the Board of Trustees, it is recommended that the Board of Trustees officially receive the proposal.

5.2 **Resolution No. 2008/09-F-01 Developer Fee Deferral INFORMATION/ACTION ITEM
(Roll Call Vote)**

The Board of Trustees is requested to consider the adoption of Resolution No. 2008/09-F-01 for the deferral of developer fees. **[EXHIBIT B]**

Recommendation:

It is recommended that the Board of Trustees consider the adoption of Resolution No. 2008/09-F-01 for the deferral of developer fees.

6. ADJOURNMENT

ACTION ITEM

In compliance with the Americans with Disabilities Act, individuals with a disability who require modification or accommodation in order to participate in this meeting should contact the executive assistant to the Board of Trustees at (714) 999-3503 by noon on January 20, 2009.

BEST BEST & KRIEGER
ATTORNEYS AT LAW

INDIAN WELLS
(760) 566-2611

IRVINE
(949) 263-2600

LOS ANGELES
(213) 617-8100

ONTARIO
(909) 989-8584

655 West Broadway, 15th Floor
San Diego, California 92101
(619) 525-1300
(619) 233-6118 Fax
BBKlaw.com

RIVERSIDE
(951) 686-1450

SACRAMENTO
(916) 325-4000

WALNUT CREEK
(925) 977-3300

January 15, 2009

Timothy Holcomb, Deputy Supt./CFO
ANAHEIM UNION HIGH SCHOOL DISTRICT
501 Crescent Way
P.O. Box 3520
Anaheim, CA 92803-3520

Re: Recommended Procedure for Deferring Collection of School Fees

Dear Mr. Holcomb:

As you requested, we have prepared the enclosed set of documents for consideration by the Board of Trustees ("Board") of the Anaheim Union High School District ("District"). You have explained that the Board is interested in deferring the collection of school facilities impact fees on residential development in order to support local economic stimulus efforts. As you know, school fees are typically paid to the District prior to issuance of building permit. However, the Board is interested in deferring collection of school fees until certificates of occupancy or final inspections are approved by the local municipality, somewhat mirroring recent action taken by the City of Anaheim.

The purpose of this letter is to provide you with a brief overview of each of the documents in the packet and how they fit into our recommended approach. We also discuss some of the risks associated with deferring school fees. Because of these risks, we recommend that District staff and the Board carefully consider the practical and legal implications associated with allowing the deferred collection of school fees.

Legal Background

Education Code section 17620(b) provides that a city or county cannot issue a building permit to a developer unless it first receives a certificate of compliance from the appropriate school district verifying that: (1) compliance with any "fee, charge, dedication or other requirement" levied by the school district has been complied with or (2) the school district has determined that the "fee, charge, dedication or other requirement" does not apply to that construction. Therefore, the law allows great discretion and flexibility on the part of school districts in determining the prerequisites for issuing a certificate of compliance.

Timothy Holcomb, Deputy Supt./CFO
ANAHEIM UNION HIGH SCHOOL DISTRICT
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Though highly unusual in practice, a school district interested in postponing collection of School Fees can do so in a number of ways. For example, this could be accomplished on a case-by-case basis via a mitigation agreement that defers collection of school fees in exchange for a higher fee payment or a special financing arrangement. In addition, under Education Code section 17620(c) and 17621(c), a governing board may generally postpone collection of school fees until final inspection or occupancy, by making that determination at the time it adopts the resolution levying such fees and by providing notice to local agencies.

However, it is our understanding that the District's interest in deferring collection of School Fees is more narrowly focused on residential construction. In addition, given the inherent risks associated with deferred collection, we are recommending a procedure that requires commitment and accountability on the part of the developer, as well as the city in which the development is occurring. These protocols, described below, are being recommended to best protect the District against potential loss of school fee revenue that could occur due to the deferral process.

School Fee Deferral Documents

The following documents are enclosed:

1. Resolution Approving a Deferral of School Fees to Support Economic Stimulus for the Calendar Year 2009
2. School Fee Deferral Procedure (Ex. "A" to Resolution)
3. School Fee Deferral Application (Ex. "A" to Resolution)
4. School Fee Deferral Agreement (Ex. "A" to Resolution)
5. Memorandum of Understanding (Ex. "B" to Resolution)
6. Verification of Deferred School Fee Payment (Ex. "1" to MOU)

The first document above is a proposed Board Resolution containing a brief description and appropriate findings adopting and approving the deferred collection of school fees. In adopting this approach, we have mirrored some of the language that the City of Anaheim recently adopted as part of its economic stimulus package.

The next three documents would be attached as Exhibit "A" to the Board Resolution and are: the School Fee Deferral Procedure, a School Fee Deferral Application ("Application"), and a School Fee Deferral Agreement ("Agreement"). To seek a deferral of School Fees, a developer would be required to execute and submit the Application, which provides the District with necessary information about the project, and the Agreement, which memorializes the rights of the District regarding deferred collection. The Agreement contains specific contractual protections for the District, including penalties and payment of attorneys fees for enforcement of

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ATTORNEYS AT LAW

Timothy Holcomb, Deputy Supt./CFO
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the Agreement if necessary. As described in the School Fee Deferral Procedure, upon receipt of an Application, the District would determine whether the applicant's project is eligible for the school fee deferral, and if so, execute the Agreement and provide the developer with a certificate of compliance so that a building permit can be issued by the city. The Agreement should also be recorded against the developer's property to make sure it is binding on any successors to the developer.

The next listed document, and Exhibit "B" to the Board Resolution, is a proposed Memorandum of Understanding ("MOU") between the District, its feeder elementary school districts and the cities in which the District will be collecting school fees. Under the proposed procedure, only development located within the District and a city that agrees to sign the MOU is eligible for deferred school fees. This is because the MOU provides the District with some level of protection regarding the responsibility of the participating city to ensure that deferred fees have actually been paid to the District before it issues the certificate of occupancy or final inspection approval. It also provides for indemnification and attorneys fees if the District is required to incur costs as a result of the city's failure to comply with the MOU.

Finally, enclosed is a "Verification of Deferred School Fee Payment," which is Exhibit "1" to the MOU. This form would be filled out by the District upon payment of deferred school fees, and under the MOU would be required before a city could issue a certificate of occupancy or approve final inspection.

Practical and Legal Issues Raised by the Process

Collection Issues

Although our recommended approach is designed to protect the District and facilitate collection of deferred school fees at the time the certificate of occupancy or final inspection are completed, this highly unique process could result in practical enforcement and/or administrative issues.

As the District is aware, the standard practice among school districts is to collect school fees at the time building permits are issued pursuant to Education Code section 17620(b). While there is nothing improper or unlawful in permitting a deferral of school fees, it is outside the norm, and will therefore be a new and different process for both city and District staff. It is possible that mistakes may be made, which could result in the District not timely receiving the appropriate school fees as projects proceed through the development process. This includes the possibility that building permits could be pulled, building commenced but then stalled and/or terminated and then finished at a much later date, which could lead to developments/units falling through the cracks. This could be complicated by a change in property ownership if the purchaser believed school fees were already paid, as is common practice. However, we believe the attached documents have done as much as possible to limit the District's exposure to this kind of error and that this approach best protects the District by providing the District express contractual rights against both the developer and its successors through the Agreement, as well

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as the local cities which will be enforcing the school fees through the MOU(s) between the District, the elementary schools and the cities.

Residential Versus Commercial

The distinction being made between residential and commercial development raises a legal issue regarding whether such differential treatment is legally justified. It is our understanding that the Board is interested in mirroring the City of Anaheim deferral process, and that involves only residential development. However, this creates the potential for a commercial builder to protest how and why the District has chosen to only allow the deferral for residential construction. Apart from the desire to mirror the City of Anaheim's program, we are not aware of any other specific rationale or basis for the District treating residential and commercial developers differently. For this reason, we recommend the District carefully consider this issue and determine whether there is an additional rationale or basis for permitting the deferral for only residential construction. If there is none, the Board should be aware that this is a potential area of liability. On the other hand, if a specific rationale and/or explanation can be articulated, we recommend that such be included as part of the agenda item or staff report at the Board meeting so that it would be in the record.

Different Implementation in Different Cities and Feeder School Districts

We have drafted the attached documents in a generic fashion so that the District could use them with any city or feeder school district within its boundaries. We understand that the District covers portions of five cities and has five feeder elementary school districts. For this reason, it may be difficult to obtain agreement by and among all cities and school districts.

With respect to cities, we are recommending that the school fee deferral program apply only to those projects located in a city that has agreed to cooperate with the District in the implementation and enforcement of the program. While we believe this could result in developers in the District being treated differently, we believe there is a reasonable basis to make such a distinction, since the District could lose significant school fee revenue if a city is not committed to the program.

With regard to the feeder elementary school districts, the enclosed MOU provides such school districts the option of either agreeing or disagreeing to the deferral of school fees. If a school district does not agree to deferred school fees, the District would continue to collect that elementary school district's portion of school fees at the time of building permit, while deferring collection of the District's portion.

We note that the involvement of so many local agencies would complicate the process administratively. In addition, if certain municipalities decline to execute the MOU, there is the possibility that a developer might protest the fact that developers within one city are allowed a deferral of school fees, while developers in another city are not, simply because a city refused to execute the MOU. However, we believe this is less likely to be a significant issue than the residential/commercial distinction, given that the proposed Board Resolution and documentation

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ATTORNEYS AT LAW

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demonstrates the District's attempt to treat all residential developments within its boundaries the same.

We look forward to working with the District to finalize these documents and implement the District's desired school fee deferral process. If you have any questions or need any additional assistance in finalizing the attached documents for the Board's consideration, please do not hesitate to contact us.

Very truly yours,



Dina Harris
Tyree K. Dorward
of BEST BEST & KRIEGER LLP

Enclosures

Anaheim Union High School District

RESOLUTION NO. 2008/09-F-01

**RESOLUTION APPROVING A DEFERRAL OF SCHOOL FEES
IMPOSED PURSUANT TO GOVERNMENT CODE SECTION 65995 ET SEQ.
AND EDUCATION CODE 17620 ET SEQ. FOR THE CALENDAR YEAR 2009
TO SUPPORT ECONOMIC STIMULUS**

WHEREAS, the Board of Trustees (“Board”) of the Anaheim Union High School District (“District”) provides for the educational needs for junior and senior high school students within the City of Anaheim and other municipalities in Orange County; and

WHEREAS, the District collects school facilities impact fees (“School Fees”) on all residential and commercial development within its boundaries pursuant to Government Code section 65995 *et seq.* and Education Code section 17620 *et seq.* and in accordance with the District’s adopted school fee justification studies and Board resolutions; and

WHEREAS, pursuant to Education Code section 17620(b), and pursuant to the Board resolutions adopting School Fees, local agencies with development approval authority are prohibited from issuing a building permit for any construction absent certification by the District that any fee, charge and other requirement levied by the District, including the requirement to pay School Fees, has been satisfied, or that such payment is not required; and

WHEREAS, the Board recognizes that the recent business climate in Southern California and the nation has negatively impacted the economy in the community the District serves; and

WHEREAS, City of Anaheim (“City”) recently adopted an Economic Stimulus Package to encourage residential development within its boundaries, which includes, but is not limited to a deferral of the collection of City’s development fees until such time that the City issues certificate(s) of occupancy or approves final inspection(s) of the development, whichever is earlier; and

WHEREAS, in order to support the local economic stimulus efforts, the District desires to provide for the deferred collection of School Fees on residential development; and

WHEREAS, the District intends to allow such deferred collection of School Fees in accordance with the procedure and forms set forth in Exhibit “A” for all those developers or builders who apply for deferral of School Fees and meet the requirements of the procedure; and

WHEREAS, in order to facilitate the District’s deferral of School Fees and the ultimate collection of such fees, the District intends to enter into memoranda of understanding (“MOUs”), in substantially the form attached hereto as Exhibit “B” with its feeder elementary school districts and the City of Anaheim and other cities with residential development within District boundaries;

NOW, THEREFORE, IT IS HEREBY RESOLVED AND ORDERED that:

- SECTION 1 The foregoing recitals are true and correct.
- SECTION 2 The Board accepts and adopts the deferred collection of School Fees in accordance with the procedure and forms set forth in Exhibit "A" hereto ("School Fee Deferral Procedure"), which procedure and forms may subsequently be modified by the Superintendent or designee consistent with the overall goals and purposes of the Board and this Resolution.
- SECTION 3 The Board authorizes the Superintendent or designee to negotiate, modify as needed, and finalize the MOU attached hereto as Exhibit "B" with its feeder elementary school districts and cities within District boundaries.
- SECTION 4 The Board further directs the Superintendent or designee to post on the District's website the School Fee Deferral Procedure and forms, as they now exist and as they may be modified by the Superintendent or designee.
- SECTION 5 The Board further authorizes the Superintendent or designee to take any and all action necessary to accomplish the deferral of School Fees authorized by this Resolution.
- SECTION 6 The attached School Fee Deferral Procedure shall only apply to residential development located in cities that enter into the MOU, attached hereto as Exhibit "B," with the District.
- SECTION 7 The attached School Fee Deferral Procedure shall only apply to School Fees levied by the District. The District shall continue to collect School Fees levied by each feeder elementary school district at the time of building permit, except with respect to those feeder elementary school districts that enter into the MOU, attached hereto as Exhibit "B," with the District.
- SECTION 8 The School Fee Deferral Procedure shall be effective immediately and continue through December 31, 2009, unless renewed by the Board prior to its expiration.

PASSED AND ADOPTED on February ____, 2009, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

This is to certify that the foregoing document is a true copy of the Resolution of the Board of the Anaheim Union High School District of Orange County.

Clerk of the Board

EXHIBIT "A"

SCHOOL FEE DEFERRAL PROCEDURE

In order to be eligible for the deferred collection of School Fees due on a development, and consistent with the authority granted by the Anaheim Union High School District Board of Trustees pursuant to Resolution No. _____, a developer/builder (“Developer”) must meet the following terms and conditions and comply with the procedure below:

1. Application. The Developer must complete the attached “School Fee Deferral Application” and submit the application to the District Superintendent or designee for review and approval. The Developer must submit additional supporting documents that may be requested by the District.
2. Eligibility. The District shall review the application and determine whether the Developer is eligible for the deferral, based on type and location of development. In order for a Project to be eligible for deferred School Fees, it must be residential development located within a city that has entered into an MOU with the District regarding deferred School Fees. In addition, the District’s approval of deferred School Fees applies only to the District’s share of School Fees, and not to the feeder elementary school district’s share of School Fees, unless that elementary school district has also agreed to defer collection of School Fees and enters into an MOU with the District.
3. Agreement. The District will provide the Developer with the attached “School Fee Deferral Agreement” for consideration. In order to be eligible for deferred School Fees, the Agreement must be signed and notarized by the appropriately authorized representative of the Developer.
4. Certificate of Compliance. If the Superintendent or designee approves the application, and upon receipt of the executed School Fee Deferral Agreement, the District will issue the Developer a certificate of compliance pursuant to Education Code section 17260(b), indicating that the Developer’s payment of School Fees has been deferred in accordance with this procedure.
5. Recording Agreement Against Property. District staff will record the fully executed School Fee Deferral Agreement against the Developer’s property to provide notice to any subsequent property owners of the deferred school fee obligation.
6. Appeal Rights. If the Superintendent or designee does not approve an application for a deferral of School Fees, the Developer may appeal that decision, by submitting an appeal in writing to the District Superintendent, within ten (10) days of the denial of the application.
7. Payment of Deferred Fees/ Verification. Prior to, and as a condition of, issuance of certificate(s) of occupancy or approval(s) of final inspection, whichever is earlier, Developer must pay the deferred School Fees at the District office. Developer shall present the District with city verification of square footage due for payment. **The amount paid by Developer must reflect the District’s residential development fee amount in effect at the time of payment, and not the amount in effect at the time the building permit is issued.** Developer shall pay the deferred School Fees at time of issuance of certificate(s) of occupancy or approval(s) of final inspection, whichever is earlier, or, as an option, the Developer may, at any time during the deferral period, pay all School Fees due on the Project at the rate in effect at time of payment. Upon full payment of the deferred School Fees, the District will issue to the Developer a “Verification of Deferred School Fee Payment,” which must be provided to the city prior to issuance of certificate(s) of occupancy or approval(s) of final inspection, whichever is earlier.
8. Multiple Certificates of Occupancy/Final Inspection. School Fees must be paid each time a Developer is seeking a certificate of occupancy, whether temporary or permanent, or approval of final inspection for any portion of the Project. This may mean School Fees must be paid multiple times during the course of a Project as each portion is ready for occupancy or final inspection.

SCHOOL FEE DEFERRAL APPLICATION

Pursuant to Resolution No. _____ of the Board of Trustees of the Anaheim Union High School District ("District"), I, _____, the developer/builder ("Developer") of the _____ project ("Project") located at _____, consisting of APN(s) _____ do hereby apply for the deferral of the residential school fees that would be due to the District for the following Project:

1. Type of Residential Development:
 Custom Home Tract Room Addition Apartment Senior Housing
2. Number of Residential Units _____
3. Total Residential Square Footage _____
4. Other Square Footage in Project (Fees Not Deferred) _____

By submitting this application, Developer certifies that the above-described information is true and correct. Developer also acknowledges that it has received a copy of the District's School Fee Deferral Agreement and wishes to enter into such Agreement based on the terms set forth therein. By executing such Agreement, Developer agrees that it will pay the residential development school fee amount due on the above described Project prior to, and as a condition of, the issuance of certificate(s) of occupancy or approval(s) of final inspection, whichever is earlier, for the Project described above and in accordance with the School Fee Deferral Procedure. Developer acknowledges receipt of the District's School Fee Deferral Procedure and agrees to comply with its terms and conditions. Any questions regarding this application should be directed to the District's Superintendent or Designee at (714) 999-3511.

DEVELOPER:

By: _____ Date: _____

Name: _____

Title: _____

Attached: School Fee Deferral Agreement
School Fee Deferral Procedure

DISTRICT USE ONLY:

_____ Approved _____ Denied

By: _____ Date: _____

Name: _____

Title: _____

Elementary District: _____ Participating in Deferral? _____ _____
Yes No

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Anaheim Union High School District
501 Crescent Way, P.O. Box 3520
Anaheim, CA 92803
Attn: Superintendent

Fee Exempt: Govt. Code § 27383
Documentary Transfer Tax: \$ None
Revenue and Taxation Code 11922

SCHOOL FEE DEFERRAL AGREEMENT

Pursuant to Resolution No. _____ of the Board of Trustees of the Anaheim Union High School District (“District”), the District and _____, the developer/builder (“Developer”) of the _____ project (“Project”) located at _____, consisting of APN(s) _____ do hereby enter into this School Fee Deferral Agreement (“Agreement”) for the Project as of _____, 2009.

The District Board of Trustees has levied school impact fees (“School Fees”) on the construction of residential development within the boundaries of the District pursuant to Government Code section 65995 *et seq.* and Education Code section 17620 *et seq.*, which fees are generally due at time of building permit. In consideration for the execution of this Agreement, the District agrees to immediately issue to the Developer certificates of compliance pursuant to Education Code section 17620(b) for the Project described herein in order to facilitate the Developer obtaining building permits for such Project. In exchange for these certificates of compliance, the Developer agrees to the following:

1. The Developer shall pay the School Fees due on the Project described below at the time the local agency with approval authority over development issues a certificate(s) of occupancy or approves final inspection(s), whichever is earlier. Or, as an option, the Developer may, at any time during the deferral period, pay in lump sum all School Fees due on the Project at the rate in effect at time of payment, and in accordance with the District’s School Fee Deferral Procedure. The Project consists of the following:

Type of Residential Development:

Custom Home Tract Room Addition Apartment Senior Housing

Number of Residential Units _____
Total Residential Square Footage _____
Other Square Footage in Project (Fees Not Deferred) _____

2. Only the above described Project shall be eligible for deferred payment of School Fees. Only residential square footage may be deferred under this Agreement.

3. The Developer shall pay the applicable School Fees for the Project in effect at the time of the issuance of certificate(s) of occupancy or approval(s) of final inspection. Or, as an option, the Developer may, at any time during the deferral period, pay in lump sum all School Fees due on the Project at the rate in effect at time of payment and in accordance with the District's School Fee Deferral Procedure. Developer understands that the amount of School Fees due at the time of issuance of certificate(s) of occupancy or approval(s) of final inspection, or at any time during the deferral period, may be greater than the amount in effect at the time of this Agreement or at time of building permit.

4. This Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest, assigns, and legal representatives of the Developer. As used in the foregoing, "successors" shall refer to the Developer's interest in the Property and to the successors to all or substantially all of their assets and to their successors by merger or consolidation. Developer shall provide the District with written notice prior to assigning or otherwise transferring the obligations of this Agreement to such a successor.

5. Upon execution by the parties, the District will record this Agreement against the Property to provide notice to any potential purchasers or successors-in-interest of the Property that School Fees must be paid prior to certificate(s) of occupancy or approval(s) of final inspection of the Property, whichever is earlier.

6. Developer acknowledges and agrees that Developer is responsible for making payment to the District at the time specified above, regardless of whether the local agency enforces such payment as a condition of issuance of a certificate(s) of occupancy or approval(s) of final inspection. Developer further agrees that failure to do so will result in a 5% penalty per month from the date the certificate(s) of occupancy is/are issued or the final inspection(s) is/are approved, whichever is earlier.

7. Developer acknowledges and agrees that it shall be liable for the payment of all attorneys' fees, costs, and any other damages resulting from Developer's failure to comply with the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this Agreement, as of the day and year first written above.

DEVELOPER:

By: _____

Name: _____

Its: _____

DISTRICT:

By: _____

Name: _____

Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ 2009 before me, _____ Notary Public,
personally appeared _____, personally known to me to be
the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ 2009 before me, _____ Notary Public,
personally appeared _____, personally known to me to be
the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

Signature _____

(Seal)

EXHIBIT "B"

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ANAHEIM UNION HIGH SCHOOL DISTRICT,
THE CITY OF _____, AND
ELEMENTARY SCHOOL DISTRICT(S)
REGARDING DEFERRAL OF SCHOOL FEES**

This Memorandum of Understanding ("MOU") is made on this ____ day of _____, 2009, by and between the ANAHEIM UNION HIGH SCHOOL DISTRICT ("AUHSD"), the City of _____ ("City"), and the elementary school district listed as a signatory below ("ESD").

RECITALS

WHEREAS, AUHSD and ESD are public school districts in the State of California and are responsible for the construction and operation of schools within their respective boundaries; and

WHEREAS, the City is a municipal corporation with development approval authority over new residential and commercial developments within its boundaries; and

WHEREAS, AUHSD and ESD have levied school facilities impact fees ("School Fees") on all residential and commercial development within their respective boundaries pursuant to Government Code section 65995 *et seq.* and Education Code section 17620 *et seq.* and in accordance with their adopted school fee justification studies and Board resolutions; and

WHEREAS, such School Fees are collected by AUHSD, on behalf of itself and ESD, prior to the issuance of a certificate of compliance by AUHSD, which certificate is required prior to issuance of a building permit by the City; and

WHEREAS, AUHSD and ESD desire to support local economic stimulus efforts by deferring the collection of residential School Fees until such time that the City either issues certificate(s) of occupancy or approves the final inspection(s) of such development, whichever is earlier; and

WHEREAS, in order to mutually assist each other in the implementation of this deferral of School Fees and the furtherance of economic stimulus efforts, the parties agree to abide by the terms and conditions of this MOU.

NOW, THEREFORE, based upon the mutual promises contained herein, and for good and valuable consideration, it is agreed by and between the parties as follows:

AGREEMENT

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Purpose and Intent. The parties' purpose in entering into this MOU is to cooperate and collaborate to the maximum extent feasible, in order to mutually assist each other in the implementation of a School Fee deferral program and in furtherance of local economic stimulus efforts.

3. AUHSD and ESD Obligations. In accordance with AUHSD Resolution No. _____ and ESD Resolution No. _____, as applicable, the AUHSD and ESD agree to allow the deferral of School Fees for residential developments within their mutual boundaries as set forth in the procedures the AUHSD and ESD have approved to implement the above described resolution(s). For the residential developments which have been approved by AUHSD for a School Fee deferral as described above, upon payment of deferred School Fees, AUHSD shall sign and forward to the City a Verification of Deferred School Fee Payment (in the form attached hereto as Exhibit "1") for the units which have paid the appropriate School Fees.

4. City Obligations. The City expressly agrees that it will not issue a certificate of occupancy and/or approve a final inspection for any portion of any residential development within the boundaries of the AUHSD and ESD unless and until it confirms that School Fees have been paid to AUHSD, either at the time of building permit, or on a deferral basis as confirmed by the Verification of Deferred School Fee Payment, attached hereto as Exhibit "1," for that portion of the Project. Prior to issuing the certificate(s) of occupancy or approval(s) of final inspection based on deferred payment, the City shall verify that the development information contained in Verification of Deferred School Fee Payment is accurate and shall contact the District with any questions regarding accuracy.

5. Effective Date. Following approval of this MOU by the parties, this MOU shall be effective upon execution by the parties, through December 31, 2009. Prior to January 1, 2010, and annually thereafter, this MOU may be renewed upon mutual agreement of the parties.

6. Amendment. This Memorandum shall not be amended without the prior written consent of each party.

7. Elementary School District Participation. Each ESD shall be provided the opportunity to accept or reject the deferred collection of its share of School Fees. AUHSD shall continue to collect School Fees at the time of building permit for any ESD that does not wish to

defer collection of School Fees. The ESD's determination in this regard shall be indicated below. If multiple ESDs exist with the boundaries of both the City and AUHSD, each ESD's participation or nonparticipation shall be indicated on separate counterpart signature pages to this MOU.

8. Indemnification and Attorneys Fees. City agrees to hold harmless and indemnify AUHSD, its officers, employees or agents, from and against any liabilities, claims, costs and expenses, including attorney's fees and legal costs, resulting from the City's failure to comply with the provisions of this MOU.

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

CITY OF _____

ANAHEIM UNION HIGH SCHOOL DIST.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Participation by _____ Elementary School District ("ESD"):

ESD wishes to defer collection of its share of School Fees and agrees with the provisions of the MOU, as set forth above, and with the AUHSD's Deferred School Fee Procedure.

or

ESD does not wish to defer collection of school fees as set forth above. Instead, AUHSD should continue to collect school fees on behalf of ESD at time of building permit and prior to issuance of a certificate of compliance.

ELEMENTARY SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

EXHIBIT "1"
TO
MEMORANDUM OF UNDERSTANDING

Anaheim Union High School District
VERIFICATION OF DEFERRED SCHOOL FEE PAYMENT

Required Prior to Issuance of Certificate(s) of Occupancy/Approval(s) of Final Inspection

The Anaheim Union High School District hereby verifies that _____, the developer/builder ("Developer") of the _____ Project located at _____, consisting of APN(s) _____ paid the school fees for the Project as described below:

1. Certificate of Compliance Information
 - a. Receipt # and Date: _____
 - b. Total Square Footage in Project: _____
 - c. Residential Square Footage (Fees Deferred): _____
 - d. Other Square Footage (Fees Not Deferred): _____

2. Total Deferred Residential Square Footage (from 1.c above): _____
 - a. Deferred Square Footage Previously Paid: _____
 - b. Date(s) of Verification (attach page if needed): _____

3. Current Payment on Deferred Square Footage
 - a. Residential Square Footage: _____
 - b. Current Residential School Fee Rate: \$ _____
(adjusted per arrangement with Elementary District)
 - c. Current School Fee Amount Due: \$ _____
 - d. Amount Paid: \$ _____
 - e. Date Paid: _____
 - f. Check Number: _____

4. Remaining Deferred Residential Square Footage in Project (w/o Certificate(s) of Occupancy) _____

In accordance with the MOU dated _____ between the City and the District, the District hereby verifies that the Developer has paid the deferred school fees described above.

By: _____ Date: _____
Name: _____
Title: _____

NOTICE TO CITY: Prior to issuing certificate(s) of occupancy or approval(s) of final inspection, please verify that the development information describe above is accurate. If there are any questions regarding accuracy, please contact _____ at the District at (714) _____.