RESOLUTION NO. 2019-092

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING A REIMBURSEMENT PAYMENT IN THE AMOUNT OF \$286,180 AND AN AGREEMENT REGARDING REIMBURSEMENT UNDER DISPOSITION AND DEVELOPMENT AGREEMENT AND ACKNOWLEDGING DISCHARGE OF CITY OBLIGATIONS

WHEREAS, the City of Rohnert Park, a California municipal corporation ("City"), and Costco Wholesale Corporation, a Washington Corporation ("Developer") entered into that certain Disposition and Development Agreement ("Development Agreement"), dated November 27, 2001; and

WHEREAS, Developer has completed the construction of a storm drain system from the southwesterly corner of the Costco property to and including an outfall in Hinebaugh Creek, and a traffic signal and other improvements installed at the intersection of Redwood Drive and Martin Avenue in accordance with the plans and specifications for the work and have requested the City to accept the work; and

WHEREAS, Section 4.11.A. Intersection Improvements and Section 4.11.C. Drainage Facilities of the Development Agreement sets forth that Developer is entitled to reimbursement of the costs from developers of other properties and that the City agrees to impose such reimbursement obligation as a condition of approval of such property, and to be reimbursed to Developer (the "Reimbursement Payment"); and

WHEREAS, City has reviewed and audited Developer's final cost accounting and agrees that the actual costs incurred by developer are \$453,644.00, and that \$286,180.00 are costs that should be reimbursed to Costco as the amount of the Reimbursement Payment.

WHEREAS, City wishes to remit the Reimbursement Payment to the Developer and for the Developer to acknowledge receipt of the Reimbursement Payment and fully discharge the City of reimbursement obligations under the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park as follows:

- 1. The City Council hereby approves a reimbursement payment to Developer in the amount of \$286,180.00 to meet City's obligations under Sections 4.11 (A) and (C) of the Development Agreement, consisting of \$244,547.00 from the Stadium Lands development, and \$41,633.00 from Fairfield Inn and Suites.
- 2. The City Manager is hereby authorized to enter into an Agreement Regarding Reimbursement Under Disposition and Development Agreement and Acknowledging Discharge of City Obligations, in substantially similar form to Exhibit A, subject to minor modifications by the City Manager and approved by the City Attorney, and which is attached to this Resolution and incorporated by this reference.
- 3. The Finance Director is authorized and directed to take the actions necessary to amend budgets and appropriate funds to reimburse Developer for construction of improvements as pursuant to Development Agreement.

DULY AND REGULARLY ADOPTED this 23rd day of July, 2019.

CITY OF ROHNERT PARK

Gina Belforte, Mayor

ATTEST:

JoAnne M. Buergler, City Clerk

Attachments: Exhibit A

ADAMS: Aye MACKENZIE: Absent STAFFORD: Aye CALLINAN: Aye BELFORTE: Aye AYES: (4) NOES: (5) ABSENT: (1) ABSTAIN: (5)



EXHIBIT A TO RESOLUTION NO. 2019-092

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Rohnert Park
130 Avram Avenue
Rohnert Park, CA 94928-2486
Attn: City Clerk

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

Exempt from Recording Fee per Gov't Code section 27383

AGREEMENT REGARDING REIMBURSEMENT UNDER DISPOSITION AND DEVELOPMENT AGREEMENT AND ACKNOWLEDGING DISCHARGE OF CITY OBLIGATIONS

This Agreement Regarding Reimbursement Under Disposition and Development Agreement and Acknowledging Discharge of City Obligations (the "Agreement") is entered into as of ______, 20___, by the City of Rohnert Park, a California municipal corporation ("City"), and Costco Wholesale Corporation, a Washington corporation ("Developer").

RECITALS

- A. City and Developer entered into that certain Disposition and Development Agreement ("Development Agreement"), dated November 27, 2001.

 B. City certified in that certain Notice of Completion, dated ______ and recorded on _____ as Instrument No. _____ in the Official Records of Sonoma County, California, that Developer completed construction of all things required of Developer in accordance with provisions of the Section 4.11 Certain Improvements to be Constructed by Costco in the Development Agreement.
- C. Section 4.11.A. Intersection Improvements and Section 4.11.C. Drainage Facilities of the Development Agreement sets forth that Developer is entitled to reimbursement of the costs from developers of other properties and that the City agrees to impose such reimbursement obligation as a condition of approval of such property, and to be reimbursed to Developer (the "Reimbursement Payment").
- D. City has reviewed and audited Developer's final cost accounting and agrees that the actual costs incurred by developer are \$453,644.00, and that \$286,180.00 is the amount that should be reimbursed to Costco as the amount of the Reimbursement Payment.
- E. City desires to remit the Reimbursement Payment to the Developer and for the Developer to acknowledge that upon City's payment of the Reimbursement Payment, the City is fully discharged its reimbursement obligations under the Development Agreement.

NOW, THEREFORE, City and Developer hereby agree as follows:

- 1. Reimbursement. City agrees to pay Developer the total Reimbursement Payment in the amount of Two Hundred Eighty Six Thousand, One Hundred Eighty Dollars (\$286,180) in accordance with the terms of the Development Agreement.
- 2. Reimbursement Obligation Discharged; Waiver and Release. Developer agrees and acknowledges that upon City's payment of the Reimbursement Payment, the City's obligations under Section 4.11(A) and (C) of the Development Agreement are fully discharged and the City has no

EXHIBIT A TO RESOLUTION NO. 2019-092

remaining reimbursement obligation to the Developer. As of the date of City's payment hereunder, Developer does hereby fully, unconditionally and completely waive, release and discharge the City and its officials, officers, employees and agents, from any and all claims, actions, causes of action, demands, damages, costs, liabilities, expenses (including attorneys' fees) and compensation, of any kind or nature, arising from the reimbursement obligations set forth in Sections 4.11(A) and (C) of the Development Agreement.

3. <u>Authority</u>. The undersigned represent and warrant that they have the full capacity, right, power and authority to execute, and deliver this Acknowledgement and all required actions, consents and approvals therefor have been duly taken and obtained.

IN WITNESS WHEREOF, the undersigned duly executed this Agreement as of the date set forth above.

		CITY:				
		CITY OF ROHNERT PARK, a California municipal corporation				
		By:				
		-	Darrin Jenkins, City Manager			
ATTE	ST:					
Ву:	JoAnne Buergler, City Clerk					
APPROVED AS TO FORM:						
Ву:						
	City Attorney	DEVEL	OPER:			
			O WHOLESALE CORPORATION, ington corporation			
		Ву:				
		Name:				
		Its:				

EXHIBIT A TO RESOLUTION NO. 2019-092

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CAL	LIFORNIA)		
STATE OF CAI COUNTY OF _					
On	, 20	before me,		, Notary Public, , who proved to me on name(s) is/are subscribed to the	
personally appea	ared		P110-0000	, who proved to me on	
the basis of satis	sfactory evi	dence to be the	person(s) whose	name(s) is/are subscribed to the	
within instrume	nt and ackn	owledged to me	that he/she/they	executed the same in his/her/their	
authorized capac	city(ies), an	d that by his/he	r/their signature((s) on the instrument the person(s),	
				outed the instrument.	
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I certify under P	ENALTY (OF PERJURY v	inder the laws of	f the State of California that the	
foregoing parag	raph is true	and correct.			
	_				
WITNESS my h	nand and of	ficial seal.			
Signature:				(seal)	
		********	******	****	
A notary public o	r other officer	completing this ce	ertificate verifies on	ly the identity of the individual who signed	_
the document to v	which this cert	ificate is attached.	and not the truthful	ness, accuracy, or validity of that document.	
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STATE OF CAL COUNTY OF _)		
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or the entity upo	on behaif of	which the perso	on(s) acted, exec	cuted the instrument.	
L certify under P	FNALTY	OF PERHIRY 1	inder the laws of	f the State of California that the	
foregoing parag			inder the laws of	the state of Camornia that the	
roregoing parag	rupii is true				
WITNESS my h	nand and of	ficial seal.			
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Signature:				_ (seal)	
J					