

RESOLUTION NO. 2014-096

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK APPROVING A REIMBURSEMENT AGREEMENT BY AND BETWEEN CITY OF ROHNERT PARK AND MCDONALD'S USA

WHEREAS, the former Community Development Commission of the City of Rohnert Park ("Former CDC") acquired that certain real property located in the City of Rohnert Park described in Exhibit A attached hereto and made a part hereof ("Property") for redevelopment purposes;

WHEREAS, subsequent to the Former CDC's acquisition of the Property, the California Legislature enacted Assembly Bill AB 1X 26, as subsequently amended by AB 1484 (collectively, the "Dissolution Act") which dissolved redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000, et seq.);

WHEREAS, in accordance with Sections 34173 and 3417S(b) of the Dissolution Act, the City of Rohnert Park elected to serve as the successor agency to the Former CDC and, effective February 1, 2012, all nonhousing assets, properties and contracts of the Former CDC were transferred to the successor agency;

WHEREAS, the City desires to move forward with disposition of the Property to Developer in accordance with the long range property management plan adopted by the Successor Agency Oversight Board and the State Department of Finance;

WHEREAS, McDonald's USA desires to acquire the Property, at fair market value, as established by a comparison with comparable properties in the area, for use in connection with the development of a McDonald's restaurant on an adjacent parcel;

WHEREAS, McDonald's USA and Baney Corporation, an Oregon corporation ("Baney") have submitted applications for development of an Oxford Suites Hotel and McDonald's Restaurant ("Proposed Project") on real property adjacent to the Property;

WHEREAS, in order to facilitate processing of the Proposed Project, Baney and City have entered into that certain Reimbursement Agreement dated May 22nd, 2012 ("Baney Reimbursement Agreement") pursuant to which Baney is required to reimburse City for all of its costs in connection with the various project approvals necessary for the Proposed Project ("Project Approvals");

WHEREAS, City and McDonald's USA now desire to enter into a Reimbursement Agreement to provide for reimbursement from McDonald's USA to City for all costs and expenses related to potential acquisition of the Property and applications for any subdivision approvals necessary for the integration of the Property into the Proposed Project, including but not limited to legal fees, staff time and consultant costs.


NOW THEREFORE BE IT RESOLVED by the City Council that the City Manager is hereby authorized and directed to execute a Reimbursement Agreement with McDonalds USA in a form substantially similar to Exhibit A, attached hereto and incorporated by this reference, for

and on behalf of the City, including authorization for staff to make minor adjustments to this agreement subject to City Attorney review and approval.


DULY AND REGULARLY ADOPTED by the City Council of the City of Rohnert Park on this 26th day of August, 2014.



CITY OF ROHNERT PARK


Joseph T. Callinan, Mayor

ATTEST:


JoAnne M. Buergler, City Clerk

Attachment: Exhibit A Agreement

BELFORTE: AYE MACKENZIE: AYE STAFFORD: AYE AHANOTU: AYE CALLINAN: AYE
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2014 ("Effective Date"), by and among the CITY OF ROHNERT PARK ("City"), a municipal corporation, and McDonald's USA, LLC, a Delaware limited liability company ("Developer").

RECITALS

- A. The former Community Development Commission of the City of Rohnert Park ("Former CDC") acquired that certain real property located in the City of Rohnert Park described in Exhibit A attached hereto and made a part hereof ("Property") for redevelopment purposes.
- B. Subsequent to the Former CDC's acquisition of the Property, the California Legislature enacted Assembly Bill AB 1X 26, as subsequently amended by AB 1484 (collectively, the "Dissolution Act") which dissolved redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000, et seq.).
- C. In accordance with Sections 34173 and 34175(b) of the Dissolution Act, the City of Rohnert Park elected to serve as the successor agency to the Former CDC and, effective February 1, 2012, all non-housing assets, properties and contracts of the Former CDC were transferred to the successor agency.
- D. City desires to move forward with disposition of the Property to Developer contingent on approval of a long range property management plan by the Oversight Board and the Department of Finance.
- E. Developer desires to acquire the Property, at fair market value, as established by a comparison with comparable properties in the area, for use in connection with the development of a McDonald's restaurant on an adjacent parcel.
- F. Developer and Baney Corporation, an Oregon corporation ("Baney") have submitted or plan to submit an application for development of an Oxford Suites Hotel and McDonald's Restaurant ("Proposed Project") on real property adjacent to the Property.
- G. In order to facilitate processing of the Proposed Project, Baney and City have entered into that certain Reimbursement Agreement dated May 22nd, 2012 ("Baney Reimbursement Agreement") pursuant to which Baney is required to reimburse City for all of its costs in connection with the various project approvals necessary for the Proposed Project ("Project Approvals").
- H. City and Developer now desire to enter into this Agreement to facilitate the negotiation of the terms upon which Developer would acquire the Property, preparation and/or review of any documents required to effectuate such acquisition and the processing of any lot line adjustment or merger approvals (collectively, "Subdivision Approvals") necessary for the integration of the Property into the Proposed Project by providing for reimbursement from Developer to City for all costs and

expenses related to Developer's potential acquisition of the Property and applications for any Subdivision Approvals, including but not limited to legal fees, staff time and consultant costs.

AGREEMENT

In consideration of the foregoing recitals and for other good and valuable consideration, the parties hereby agree as follows:

1. **Purpose of Agreement.** The purpose of this Agreement is to provide for payment by Developer of all legal, staff and consultant costs directly or indirectly incurred by City in connection with the acquisition of the Property, including any access or use rights. Additionally, the purpose of this Agreement is to bring current all outstanding amounts subject to reimbursement.
2. **Developer Reimbursement Obligation.** Developer shall reimburse City for the following costs (collectively, "Eligible Costs") incurred in connection with the acquisition of the Property, including any access or use rights, by Developer and processing of any Subdivision Approvals:
 - a. City staff time, processing costs, consultant costs (it being understood and agreed by the parties that City shall provide prior notice to Developer before incurring consultant costs) and legal fees and costs payable to City's counsel in connection with the negotiation, drafting, implementation and defense of a purchase and sale agreement and any other real estate transactional documents for the proposed disposition of the Property, including any access or use rights, to Developer and the closing of such transaction;
 - b. City staff time, processing costs, consultant costs and legal fees and costs associated with City's processing of any Subdivision Approvals, including legal fees and costs incurred in connection with the legal defense of any challenges to such Subdivision Approvals;
 - c. a 7% administrative fee charged on costs of outside consultants and legal services which are included in subsections a and b above;
 - d. fees and costs which, as of the Effective Date, City has incurred but which have either not yet been billed for reimbursement or which have not yet been reimbursed to the City.
3. **Payment of Eligible Costs.** City shall submit to Developer a copy of each invoice, bill, demand or other evidence ("Invoice") that the City has incurred Eligible Costs or other reasonable substantiation of such Eligible Costs. Each such Invoice of Eligible Costs shall be paid in full by Developer, without deduction or offset, within thirty (30) calendar days of the date of the Invoice. Developer covenants and agrees that failure to pay such Eligible Costs to City in full within thirty (30) calendar days of the date of such Invoice will result in a Late Charge in accordance with Section 4 of this Agreement, as well as in the cessation of the work described in Subsections 2.a. and 2.b. above in accordance with Section 9 of this Agreement. Developer further covenants and agrees that, if as a result of a failure to pay an Invoice of Eligible Costs, City ceases the work described in Subsections 2.a. and 2.b. above in accordance with Section 9, Developer shall not directly or indirectly initiate

any litigation against City or its employees, agents, or volunteers for the cessation or delay in such work following such failure to pay.

4. **Late Charge.** Developer acknowledges that the late payment of any Eligible Costs will cause City to incur additional costs, including administration and collection costs and processing and accounting of expenses ("Delinquency Costs"). If City has not received payment of all Eligible Costs within thirty (30) calendar days of the date of the Invoice, the Invoice is considered overdue and Developer shall immediately be charged a late charge of five percent (5%) of the delinquent amount. The City is then authorized to pay such Late Charge from the Deposit along with the amount of the unpaid Invoice of Eligible Costs in accordance with Section 5. City and Developer recognize that the expenses that City shall suffer as a result of Developer's failure to make timely payments is difficult to ascertain and agree that said five percent (5%) late charge represents a reasonable estimate of the Delinquency Costs that would be incurred by City. City's acceptance of any such late charge does not equate with a waiver of Developer's default with respect to the overdue amount, or prevent City from exercising any rights and remedies available under this Agreement.
5. **Security Deposit.** Within twenty (20) days of signature of this Agreement, Developer shall deposit with City the sum of Five Thousand Dollars (\$5,000) in cash or other immediately available funds ("Deposit"), as security for Developer's obligation to pay all Eligible Costs, as provided herein. The Deposit shall be subject to the following:
 - a. Developer agrees that if Developer does not pay when due the full amount of each Invoice of Eligible Costs as provided in Section 3 above, then the City is authorized to pay such amount from the Deposit, which may include a Late Charge in accordance with Section 4.
 - b. If the City withdraws from the Deposit, the City shall immediately notify the Developer in writing that it has used the Deposit to pay all or a portion of the bill, invoice, demand or other evidence of Eligible Costs, and the Developer shall thereafter have fourteen (14) calendar days to deposit with City, in cash, an amount necessary to restore the Deposit to its full amount of \$5,000. If the Developer fails to replenish the Deposit within said due date, City shall have no obligation to continue the work described in Subsections 2.a. and 2.b. above or to incur any additional Eligible Costs.
 - c. If the amount of the unpaid Invoice of Eligible Costs and Late Charge exceeds the available funds in the Deposit, the City shall immediately notify the Developer in writing that it has used the Deposit to pay all or a portion of the bill, invoice, demand or other evidence of Eligible Costs, and the Developer shall have fourteen (14) calendar days to deposit with City, in cash, an amount necessary to restore the Deposit to its full amount of \$5,000, plus the full amount of the unpaid Invoice of Eligible Costs and applicable Late Charge. If the Developer fails to fully replenish the Deposit, pay the full Invoice of Eligible Costs and applicable Late Charge within said due date, City shall have no obligation to continue the work described in Subsections 2.a. and 2.b. above or to incur any additional Eligible Costs.

- d. Developer further covenants and agrees that, if as a result of reduction of the Deposit to zero dollars or failure to replenish, City ceases the work described in Subsections 2.a. and 2.b. above in accordance with Section 9, Developer shall not directly or indirectly initiate any litigation against City or its employees, agents, or volunteers for the failure to process or for delay in processing such applications following such reduction or failure to replenish.
 - e. If this Agreement is terminated as provided in Section 8 below, City shall return to Developer within ninety (90) calendar days following the effective date of termination that portion of the Deposit that has not been expended or committed by City as provided herein, if any, including interest.
6. **No Commitment as to Future Approvals.** Nothing in this Agreement shall be construed as a commitment to grant or issue any Subdivision Approvals or any other preliminary or formal approvals in connection with the Proposed Project or to enter into the proposed purchase and sale agreement or any other related real estate transactional document. Developer acknowledges and agrees that nothing in this Agreement limits City's discretion, in any manner, with respect to the proposed disposition of the Property or any other aspect of the Proposed Project. Developer agrees that it shall remain obligated to pay all Eligible Costs, regardless of whether any aspect of the Subdivision Approvals or Proposed Project is approved and regardless of whether City and Developer enter into the proposed purchase and sale agreement or other real estate transactional document. Notwithstanding the aforementioned, City shall in good faith expeditiously and with all diligence process the Subdivision Approvals.
7. **Indemnity.** Developer shall defend (with counsel approved by City, which approval shall not be unreasonably withheld), indemnify, and hold harmless the City, its officials, employees, volunteers and agents from and against any and all loss, liability, expenses, claims, costs (including reasonable attorneys fees), suits and damages of every kind, nature, and description, directly or indirectly arising from any third party legal challenge to Developer's acquisition of the Property, the granting of the Subdivision Approvals, or the implementation of this Agreement. Developer may defend against any such third party legal challenge as a Real Party in Interest using counsel of Developer's choice, and Developer and City agree to cooperate in the implementation of this Agreement and the joint defense of any challenges. Developer's indemnity obligations under this Section 7 shall survive the expiration or termination of this Agreement.
8. **Termination.** Developer may terminate this Agreement by providing thirty (30) calendar days written notice to City. If Developer is in default of any of its obligations under this Agreement and fails to cure such default within fourteen (14) calendar days following written notice from City, then City may terminate this Agreement by notice to Developer and, thereafter, City shall have no further obligation to process applications for the Subdivision Approvals or to continue with negotiation and drafting of the proposed purchase and sale and other related real estate transactional documents. Developer shall be responsible for the payment of Eligible Costs incurred by City up to and including the date of termination regardless of which party terminates this agreement.

9. **Cessation of Processing.** Developer acknowledges and agrees that City may, in its sole discretion, cease processing the Subdivision Approvals and all negotiations in connection with the proposed purchase and sale agreement and related real estate transactional documents, if
- a. this Agreement is terminated by either party following notice and expiration of any applicable cure periods as provided herein; or
 - b. Developer fails to pay such Eligible Costs to City in full within thirty (30) calendar days of the date of such Invoice; or
 - c. the Deposit amount is reduced to zero and Developer fails to replenish the Deposit upon request by City.

Developer further covenants and agrees that if City ceases the work described in Subsections 2.a. or 2.b. above for any of the foregoing reasons, Developer shall not directly or indirectly initiate any litigation against City or its employees, agents, or volunteers for the failure to process or for delay in such work following such Agreement termination.

10. **Attorneys Fees.** If any legal action is brought by either party to interpret or enforce any terms or provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.
11. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein. Any amendments, modifications, or changes to this Agreement shall be in writing and signed by both parties.
12. **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
13. **Severability.** If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.
14. **Successors and Assigns.** This Agreement shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.
15. **Jurisdiction.** This Agreement shall be administered and interpreted under the laws of the State of California without regard to its choice of law rules. Jurisdiction and venue of litigation arising from this Agreement shall be in the County of Sonoma, State of California.
16. **Notices.** Notices required by this Agreement shall be personally delivered, mailed, postage prepaid, or mailed via nationally recognized overnight courier as follows:

To the Developer:

McDonald's Corporation
One McDonald's Plaza
Oak Brook, IL 60523
LC: 004-3309
Attention: Jennifer Cohn

with a copy to:

McDonald's Corporation
299 Oak Road, Suite 900
Walnut Creek, CA 94597
Attention: Development Director

To the City:

City of Rohnert Park
130 Avram Avenue
Rohnert Park, CA 94928
Attn: City Manager

with a copy to:

Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94612
Attn: Michelle Marchetta Kenyon

Notices given by personal delivery shall be effective immediately. Notices given by overnight courier shall be effective upon the date of delivery. Notices given by mail shall be deemed to have been delivered five days after having been deposited in the United States mail. Any party may change its address for notice by written notice to the other party in the manner provided in this paragraph 16.

17. **Interpretation.** The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement is the product of negotiations among the parties, and it shall not be construed as if it had been prepared by one of the parties, but rather as if all of the parties have prepared the same. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.
18. **Authority.** Each person executing this Agreement covenants and warrants that (i) the party on whose behalf he or she is signing is duly incorporated or otherwise established or formed and validly

existing under the laws of its state of incorporation, establishment or formation, (ii) the party has and is duly qualified to do business in California, (iii) the party has full corporate, partnership, trust, association or other power and authority to enter into this Agreement and to perform all of its obligations hereunder, and (iv) each person (and all of the persons if more than one signs) signing this Agreement is duly and validly authorized to do so.

19. **Counterparts.** This Agreement may be executed in counterparts.

20. **Assignment of Claims.** To the extent City determines that it may have Claims against any Project Consultant in connection with the Proposed Project, City may, upon written request by Developer, assign such Claims to Developer. As used herein, "Project Consultant" means any consultant, contractor, or other third party whose work product gives rise to any Eligible Cost or who is hired by City in connection with the Project Approvals; and "Claims" means any and all claims, potential claims, causes of action, and potential causes of action for breach of contract and/or professional negligence, regardless of whether such claims or causes of action accrue prior to or after the effective date of this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

CITY:

CITY OF ROHNERT PARK,
a municipal corporation

City Manager

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

DEVELOPER:

MCDONALD'S USA,
a Delaware limited liability company

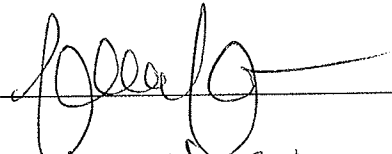
By: 
Name: Jennifer Cohn
Title: Senior Counsel

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF ROHNERT PARK, COUNTY OF SONOMA, STATE OF CALIFORNIA, BEING A PORTION OF THE LANDS OF THE CITY OF ROHNERT PARK, A MUNICIPAL CORPORATION, DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 16, 1988 UNDER DOCUMENT NUMBER 88048420, BEING A PORTION OF LOT OR FARM NUMBERED ONE HUNDRED AND SIXTY-THREE (163) OF SANTA ROSA FARMS SUBDIVISION NO. 2, AS DESIGNATED ON THE PLAT THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY SONOMA, STATE OF CALIFORNIA ON MARCH 07, 1910 IN BOOK 21 OF MAPS, PAGE 14, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: THAT PORTION OF SAID LOT OR FARM NUMBERED ONE HUNDRED AND SIXTY-THREE (163) LYING WESTERLY OF THE WESTERLY RIGHT OF WAY OF REDWOOD DRIVE AS SAID REDWOOD DRIVE IS SHOWN ON THAT CERTAIN MAP TITLE RECORD OF SURVEY OF REDWOOD DRIVE REALIGNMENT FILED JANUARY 18, 1990 IN BOOK 451 OF MAPS AT PAGE 5 IN SAID OFFICE OF THE COUNTY RECORDER, SAID PORTION BEING SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED JANUARY 08, 1992 IN BOOK 488 OF MAPS AT PAGE 20 IN SAID OFFICE OF THE COUNTY RECORDER AND BEING FURTHER DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LANDS; THENCE SOUTHERLY, ALONG THE WESTERLY LINE OF SAID LANDS, SOUTH 00° 06' 04" WEST, 280.23 FEET TO THE WESTERLY RIGHT OF WAY OF REDWOOD DRIVE, BEING A POINT OF CUSP ON A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 551.00 FEET; THENCE NORTHEASTERLY ALONG SAID WESTERLY RIGHT OF WAY FROM A TANGENT THAT BEARS NORTH 00° 06' 04" EAST, THROUGH A CENTRAL ANGLE OF 30° 31' 07" AN ARC DISTANCE OF 293.49 FEET TO THE NORTHERLY LINE OF SAID LANDS; THENCE WESTERLY, ALONG SAID NORTHERLY LINE, NORTH 89° 34' 56" WEST, 76.33 FEET TO THE POINT OF BEGINNING.

