

RESOLUTION NO. 2019-208

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO
THE AGREEMENT FOR ADVANCEMENT OF MITIGATION FUNDS AND
REIMBURSEMENT WITH WSI POPPY RIDGE, LLC (CEQA EXEMPT)**

WHEREAS, WSI Poppy Ridge, LLC ("Property Owner") is the owner of the Arbor Ranch Project ("Property") within the Laguna Ridge Specific Plan ("LRSP") area; and

WHEREAS, the Property Owner entered into an Agreement for Advancement of Mitigation Funds and Reimbursement ("Agreement") with City of Elk Grove ("City") in September of 2017; and

WHEREAS, the Agreement requires the Property Owner to reimburse the City, in full and by no later than October 1, 2019, the Property Owner's fair-share of mitigation costs incurred by the City with the delivery of the New Growth Area Project ("NGA Project") in 2019; and

WHEREAS, due to challenges the Property Owner has experienced in marketing and selling the Property to prospective builders, the Property Owner has requested, and staff has reviewed, an amendment ("First Amendment") to the Agreement which would spread the required lump sum payment into four annual installments, including interest charges, and require the full balance be paid by no later than December 1, 2022; or prior to grading of the Property; or prior to the transfer of the Property to another entity, whichever occurs first; and

WHEREAS, since this action does not constitute the approval of a project and there is no possibility that this action would have a significant effect on the environment, the action is exempt from California Environmental Quality Act (CEQA) review. (CEQA Guidelines §§ 15060(c)(2),(3); 15061(b)(3); 15378).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby authorizes the City Manager to execute the First Amendment to the Agreement for Advancement of Mitigation Funds and Reimbursement in substantially the form presented and attached hereto as Exhibit A.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 25th day of September 2019



STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JENNIFER ALVES,
ASSISTANT CITY ATTORNEY

EXHIBIT A



FIRST AMENDMENT TO AGREEMENT

WSI POPPY RIDGE, LLC

THIS FIRST AMENDMENT TO AGREEMENT ("First Amendment") is made and entered into between City of Elk Grove, a California municipal corporation ("City") and WSI Poppy Ridge, LLC, a Delaware limited liability company, registered with the California Secretary of State ("Landowner"), and hereby amends the agreement entered into between the parties on September 27, 2017 as contract number C-17-575 ("Agreement").

NOW, THEREFORE, in consideration of the mutual promises set forth herein, City and Landowner agree to as follows:

1. It is the intent of the City and Landowner to continue to be bound by all terms and conditions of the Agreement, all of which are expressly incorporated into this First Amendment by this reference, except as expressly changed by this First Amendment.

2. City and Landowner agree to amend Paragraph 3 (Timing of Reimbursement) of the Agreement, in its entirety to read as follow:

"3. Timing of Reimbursement. The city shall be paid by Landowner prior to issuance of a grading permit, but in no event shall payment of Reimbursement Cost be made later than the following payment schedule:

<u>Payment Date</u>	<u>Payment Amount</u>
December 1, 2019	\$121,625.00
December 1, 2020	\$130,746.88
December 1, 2021	\$127,706.25
December 1, 2022	\$124,665.63



"This payment schedule reflects a 2.5% interest rate beginning after the first payment is made."

4. City and Landowner agree to amend Paragraph 8 (Transfer of Property Prior to October 1, 2019) to amend the first sentence of the Agreement to read as follows:

"8. Transfer of Property prior to December 1, 2022. Should Landowner transfer the property to another entity prior to a grading permit being issued for the property and prior to December 1, 2022, it shall pay the City Reimbursement cost in full or it shall facilitate an assumption Agreement with the assignee and the City to show it is clear that the Reimbursement cost shall be paid pursuant to the terms of the original Agreement."

5. The Agreement, prior written amendments executed by all Parties, and this instrument constitute the entire agreement between City and Landowner concerning the subject matter hereof and supersedes any and all prior oral and written communications between the Parties regarding the subject matter hereof.

6. Landowner and City agree and acknowledge that the provisions of this First Amendment have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this First Amendment and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this First Amendment shall not be resolved against the drafting party.

AGREED to this _____ day of _____, 2019, by the parties as follows.

Approved as to form:

**WSI PROPPY RIDGE, LLC,
LANDOWNER**

By: Kate Hart
Attorney for Landowner

By: John C. Troutman
John C. Troutman, Vice President

Approved as to form:

CITY OF ELK GROVE

By: Jonathan P. Hobbs
Jonathan P. Hobbs, City Attorney

By: _____
Jason Behrmann, City Manager

Attest:

By: _____
Jason Lindgren, City Clerk

EXHIBIT A



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Attorney for Landowner

By: John C. Troutman
John C. Troutman, Vice President

Approved as to form:

CITY OF ELK GROVE

By: Jonathan P. Hobbs
Jonathan P. Hobbs, City Attorney

By: _____
Jason Behrmann, City Manager

Attest:

By: _____
Jason Lindgren, City Clerk

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2019-208**

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 September 25, 2019 by the following vote:

AYES: COUNCILMEMBERS: Ly, Hume, Detrick, Nguyen, Suen

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



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

