

RESOLUTION NO. 2017-135

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING A PUBLIC FACILITIES FEE CREDIT AGREEMENT WITH UNIVERSITY DISTRICT LLC AND VAST OAK PROPERTIES L.P.

WHEREAS, on November 22, 2011, the City Council of the City of Rohnert Park ("City") adopted Resolution No 2011-112 updating its Public Facilities Fees and finding this action Categorically Exempt under the California Environmental Quality Act; and

WHEREAS, on April 22, 2014, the City Council of the City of Rohnert Park adopted Ordinance Number 878 approving a Development Agreement ("Development Agreement") between the City of Rohnert Park and Vast Oak Properties L.P. and the University District LLC ("Developer"); and

WHEREAS, the Development Agreement requires the Developer to undertake the Keiser Avenue Reconstruction Project, but also allows the City to undertake all or a portion of this project, provided that the Developer funds the City's activities; and

WHEREAS, Developer and City have agreed that it is desirable for the City to undertake the design and construction of a portion of the Keiser Avenue Reconstruction Project and the Developer has deposited \$1,332,615 with the City to cover the costs of the design work; and

WHEREAS, the Keiser Avenue Reconstruction Project is included in the City's Public Facilities Finance Plan and costs associated with this project are eligible for fee credits in accordance with the Development Agreement; and

WHEREAS, the City and Developer desire to enter into a Public Facilities Fee Credit Agreement to recognize the prepayment of Public Facilities Fees, the Public Facilities Fee Credits due to Developer and the applicability and transferability of these Public Facilities Fee Credits only to development of the project as described in the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that the City Council of the City of Rohnert Park finds that this action is categorically exempt from environmental review pursuant to California Environmental Quality Act guidelines section 15061(b)(3) because the payment of Public Facilities Fees provides a means of mitigating environmental impacts which have been identified in other environmental analyses including the General Plan EIR.

BE IT FUTHER RESOLVED that the City Council does hereby authorize and approve the Public Facilities Fee Credit Agreement with University District LLC and Vast Oak Properties L.P. attached as Exhibit A.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the Public Facilities Fee Credit Agreement, in substantially similar form to that

agreement attached hereto and incorporated by this reference as Exhibit A, subject to minor modification by the City Manager or City Attorney.


BE IT FURTHER RESOLVED that the Finance Director is hereby authorized and directed to take all actions necessary to effectuate the intent of the Agreement.

DULY AND REGULARLY ADOPTED this 28th day of November, 2017.

CITY OF ROHNERT PARK


Jake Mackenzie, Mayor

ATTEST:


Caitlin Saldanha, Deputy City Clerk

Attachment: Exhibit A

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

Resolution Exhibit A

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
)
City of Rohnert Park)
130 Avram Avenue)
Rohnert Park, California 94928-2486)
Attention: City Clerk)

(Space Above This Line for Recorder's Use Only)

Exempt from recording fee per Gov. Code § 27383.

PUBLIC FACILITIES FEE CREDIT AGREEMENT

BY AND BETWEEN THE CITY OF ROHNERT PARK

AND UNIVERSITY DISTRICT LLC AND VAST OAK PROPERTIES L.P.

THIS PUBLIC FACILITIES FEE CREDIT AGREEMENT (the "Agreement") is made and entered into on this _____ day of _____, 2017 (the "Effective Date") by and between UNIVERSITY DISTRICT LLC, a Delaware limited liability corporation ("University District"), VAST OAK PROPERTIES L.P., a California limited partnership ("Vast Oak"), and the CITY OF ROHNERT PARK, a California municipal corporation ("City"), with reference to the following facts and intentions. University District and Vast Oak are collectively referred to herein as "Developer."

RECITALS

A. On April 22, 2014, the City Council of the City of Rohnert Park adopted its Ordinance No. 878 approving an Amended and Restated Development Agreement with the Developer recorded in the Official Records of Sonoma County as Document No. 2014051817 (the "Development Agreement").

B. The Development Agreement requires that the Developer construction certain roadway improvements, including improvements to Keiser Avenue.

C. The Development Agreement also gives the City the option to construct certain offsite improvements, including Keiser Avenue, provided that the Developer fund these activities.

D. Improvements to Keiser Avenue are included in the City's Public Facilities Finance Plan ("PFFP"). The Development Agreement provides that Developer is entitled to receive credits against any Public Facilities Financing Plan fees, for any Keiser Avenue costs that it funds.

E. The Developer and City agree that, in order to advance portions of the University District Development, including the affordable housing complex, it is desirable for the City construct the portion of Keiser between Snyder Lane and Kerry Road, with funding from the Developer, a portion of which has been provided.

F. City and Developer desire to enter into an agreement regarding Developer's prepayment of PFFP fees associated with the design and construction of Keiser Avenue.

A G R E E M E N T

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth in this Agreement, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are true and correct and are hereby incorporated into and form a material part of this Agreement.

2. Property Subject to Agreement. The property which is the subject of this Agreement ("Property") is located in the City of Rohnert Park, Sonoma County, California, and is described in Exhibit 1, attached hereto and incorporated by this reference. The Property is only a portion of the real property subject to the Development Agreement. The City has approved the development of residential subdivision on the Property (the "Project").

3. Public Facilities Fee Credit.

3.1. Source and Method of Credit. Subject to the limitations set forth in this Section 3, Developer, or any subsequent developer of the Property, shall receive PFFP Credits for payments received towards the design and construction of the Keiser Avenue in an amount not to exceed \$1,3XX, XXX, based on amounts previously deposited with the City.

3.2 Implementation of Public Facilities Fee Credit. The PFFP Credits shall be applied against the Public Facilities Fees that would otherwise be applicable to the Project, as the result of construction on the Property. Developer shall be entitled to receive PFFP Credits at the time of issuance of building permits for construction on the Property. The City shall keep an accounting of the balance of PFFP Credits based upon the total prepayment received from Developer and the credits applied to building permits on the Property. The PFFP Credits shall run with the land and may be credited only for development of the Project on the Property, provided that Developer may allocate the use of the PFFP Credits among components of the Project. Developer may authorize the assignment of all or portions of the PFFP Credit balance in writing, with the consent of the City, provided that PFFP Credits may not be assigned outside the boundaries of the Property and the PFFP Credits are fully utilized on the development of the Property. Developer acknowledges and agrees that payment of the PFFP Credits is limited to the development of the Property and not the entire real property described in the Development Agreement.

3.3 Expiration of Public Facilities Fee Credit. The Public Facilities Fee Credit reflects prepayment by the Developer of Public Facilities Fees that would otherwise be

due at the time building permits are issued for structures on the Property. City's obligation to extend credits shall expire upon the available balance reaching \$0.00.

4. Community Facilities District; Intent to Reimburse. City and Developer acknowledge that the California Statewide Communities Development Authority has formed a Community Facilities District that includes the Property. Payment of Public Facilities Fees is potentially eligible for funding through a Community Facilities District and Developer's costs may be reimbursed with the proceeds of Community Facilities District bonds at some future date.

5. Breach of Agreement; Remedies.

5.1. Notice of Breach and Default. The occurrence of any of the following constitutes a breach and default of this Agreement:

- (1) Developer refuses or fails to complete payment in accordance with the payment schedule.
- (2) Developer assigns the Agreement without the prior written consent of City.
- (3) Developer assigns all or a portion of the PFFP Credit balance without the prior written consent of the City.
- (4) Developer is adjudged bankrupt or makes a general assignment for the benefit of creditors, or a receiver is appointed in the event of Developer's insolvency.
- (5) Developer or Developer's contractors, subcontractors, agents, employees or assignees, fail to comply with any terms or conditions of this Agreement.

The City may serve written notice of breach and default upon Developer.

5.2. Remedies. Should the Developer breach this Agreement, City's remedy shall be to hold all available credits for prepaid funds received under this Agreement for the benefit of the Property. No failure on the part of City to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that City may have hereunder.

6. Miscellaneous.

6.1 Compliance with Laws. Developer shall fully comply with all federal, state and local laws, ordinances and regulations in the performance of this Agreement. Developer shall, at its own cost and expense, obtain all necessary permits and licenses for the Work, give all necessary notices, pay all fees and taxes required by law and make any and all deposits legally required by those public utilities that will serve the development on the Property. Copies and/or proof of payment of said permits, licenses, notices, fee and tax payments and deposits shall be furnished to the City Engineer upon request.

6.2. Notices. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if: (a) personally delivered; or (b) dispatched by next day delivery by a reputable carrier such as Federal Express to the offices of City and Developer indicated below, provided that a receipt for delivery is provided; or (c) if dispatched by first class mail, postage prepaid, to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either party may from time-to-time designate by next day delivery or by mail as provided in this section.

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

with a copy to: City of Rohnert Park
130 Avram Avenue
Rohnert Park, CA 94928
Attn: City Attorney

Developer: University District LLC
500 La Gonda Way, Ste. 100
Danville, CA 94526
Attn: Mr. Kevin Pohlson

Vast Oak Properties L.P.
c/o Quaker Hill Development Corp.
P.O. Box 2240
Healdsburg, CA 95448
Attn: Ms. Diane Anderson

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) business days after the date of deposit if addressed to an address within the State of California, and three (3) business days if addressed to an address within the United States but outside the State of California.

6.3 Attorney Fees. Should any legal action or arbitration be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to all costs of suit; reasonable attorney fees, arbitration costs and such other costs as may be determined by the court or arbitrator.

6.4. Entire Agreement. The terms and conditions of this Agreement constitute the entire agreement between City and Developer with respect to the matters addressed in this Agreement. This Agreement may not be altered, amended or modified without the written consent of both parties hereto.

6.5. Runs with the Land; Recordation. This Agreement pertains to and shall run with the Property. Upon execution, this Agreement shall be recorded in the Official Records of Sonoma County.

6.6. Transfers; Assignments. Developer may assign its obligations under this Agreement to successor owner(s) of the Property with the prior written approval of the City. In connection with any such assignment, Developer and its assignee shall execute and deliver to City a written assignment and assumption agreement in a form acceptable to the City Attorney.

6.7. Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

6.8. Severability. If any provision of this Agreement is held, to any extent, invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provision, and shall remain in full force and effect.

6.9. Waiver or Modification. Any waiver or modification of the provisions of this Agreement must be in writing and signed by the authorized representative(s) of each Party.

6.10. Relationship of the Parties. Neither Developer nor Developer's contractors, subcontractors, agents, officers, or employees are agents, partners, joint venturers or employees of City and the Developer's relationship to the City, if any, arising herefrom is strictly that of an independent contractor. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Further, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

6.11. Binding Upon Heirs, Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon all heirs, successors and assigns of the parties hereto; provided, however, that this Agreement shall not be binding upon a purchaser or transferee of any portion of the Property unless this Agreement has been assigned pursuant to Section 6.6, in which event this Agreement shall remain binding upon Developer.

6.12. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Sonoma, State of California.

6.13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original.

6.14. Interpretation. This Agreement shall be construed according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall apply to the interpretation of this Agreement.

6.15. Headings. Section headings in this Agreement are for convenience only and are

not intended to be used in interpreting or construing the terms, covenants or conditions contained in this Agreement.

6.16. Authority. Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

6.17 Joint and Several Liability. University District and Vast Oak agree to and shall be jointly and severally liable for all obligations of Developer under this Agreement.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the Effective Date.

(signatures on following page)

"CITY"

CITY OF ROHNERT PARK, a California
municipal corporation

Dated: _____

By: _____

City Manager

Per Resolution No. 2017-____ adopted by the Rohnert Park
City Council at its meeting of November 28, 2017.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

"DEVELOPER"

University District LLC,

Dated: _____

By: _____

Kevin Pohlson

Vice President

By: _____

Gregory Glenn

Chief Financial Officer

Vast Oak Properties L.P.

By: _____

ACKNOWLEDGMENT

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 CALIFORNIA)

) ss.

COUNTY OF SONOMA)

On _____ before me, _____,
(here insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Seal)

ACKNOWLEDGMENT

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 CALIFORNIA

)

) ss.

COUNTY OF CONTRA COSTA

)

On _____ before me, _____,
(here insert name and title of the officer)

personally appeared _____, who proved to me on the basis of satisfactory evidence 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Seal)

ACKNOWLEDGMENT

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
(Seal)

Exhibit 1



VAST OAK EAST - COMMERCIAL SITE
PFFP FEE CREDITS

SHEET 3 OF 3

VAST OAK EAST COMMERCIAL SITE PFFP FEE CREDITS

CITY OF ROHNERT PARK

CALIFORNIA

Mackay & Somp

ENGINEERS PLANNERS SURVEYORS
5142B FRANKLIN DR, PLEASANTON, CA 94588 (925)225-0690

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PLEASANTON
OFFICE

1" = 300'
SCALE

11-17-2017
DATE

19539.010
JOB NO.