



## **City of Rohnert Park PLANNING COMMISSION STAFF REPORT**

**Meeting Date:** December 14, 2017

**Agenda Item No:** 8.3

**Subject:** Application No. PLDA17-0003 – Second Amendment to the Development Agreement between the City of Rohnert Park and Penn Grove Mountain LLC

**Location:** Southeast Specific Plan Area - northeast of the intersection at Bodway Parkway and Valley House Drive

**Applicant:** Penn Grove Mountain LLC

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**BACKGROUND:** The Sonoma Complex Fires, which took place in October 2017, destroyed over 5,130 housing units in Sonoma County, exacerbating an already tight housing market. As part of its response to this regional disaster, the City Council directed Development Services staff to accelerate the construction of approved housing units to the maximum extent possible. Phase 1 of the Southeast Specific Plan Area includes 105 residential lots, with all the site improvements necessary to support the construction of housing units. However, the Development Agreement (DA) between the Penn Grove Mountain LLC and the City limits the project to 50 building permits until an in-tract water tank has been completed. Staff has analyzed the City's water system and concluded that the existing system can support the buildout of Phase 1 of the Southeast Specific Plan Area without the water tank. Modifying the DA to allow Phase 1 to be completed without the water tank will allow 55 more residential units to be delivered to the market within the next six to nine months. Construction of a water tank will take approximately 18 months, so the proposed DA amendment would allow for a meaningful acceleration of the delivery of housing units.

**ANALYSIS:** The proposed second amendment modifies Section 4.12(C) of the DA to extend the trigger for the water tank construction from the 50<sup>th</sup> residential building permit to the 106<sup>th</sup> residential building permit. All other terms and conditions will remain the same. This will allow the developer to complete its first phase of development, which has all the infrastructure to support development, without additional delay.

Engineering staff has analyzed the City's water system and determined that it can support the first phase of development in the Southeast Specific Plan Area, without the proposed tank. In

addition, the City's new water tank east of Petaluma Hill Road, which will be completed in 2018, will provide reliability, redundancy and capacity for the water system, which was not contemplated when the DA was originally written. City staff have made some modest upgrades to existing chlorinator pumps, which has improved water pressure in the vicinity of the development, further supporting the conclusion that water tank, or some similar type of capacity improvement, can be deferred for a short time without adverse impacts to existing customers or the new development.

**ENVIRONMENTAL DETERMINATION:** An Environmental Impact Report (EIR) was certified by the City Council when it considered the project entitlements at its meeting of December 7, 2010. The proposed DA amendment will not result in substantial changes in the project or new information of substantial importance of the kind that would require additional environmental review pursuant to Section 15162 of the CEQA Guidelines.

**PUBLIC NOTIFICATION AND INFORMATION:** This item has been duly noticed by publication in the Community Voice for Amendments to the Southeast Specific Plan Development Agreement and posted at the prescribed locations in Rohnert Park. Property owners within 300 feet of the project were mailed notices of the proposed application.

**RECOMMENDED ACTION:** Approve a resolution recommending City Council adoption of an ordinance approving the second amendment to the Development Agreement between the City of Rohnert Park and Penn Grove Mountain LLC modifying the timing of Construction of a Water Tank within the Southeast Specific Plan Area.

**ATTACHMENTS:**

- A. Resolution Recommending City Council Adoption of an Ordinance Approving the Second Amendment to the Development Agreement between the City of Rohnert Park and Penn Grove Mountain LLC Modifying the Timing of Construction of a Water Tank within the Southeast Specific Plan Area.
- B. Resolution Exhibit A – Proposed Amendment to Development Agreement

**APPROVALS:**



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Mary Grace Pawson, Director of Development Services

12/07/2017

Date

**PLANNING COMMISSION RESOLUTION NO. 2017-30**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE  
CITY OF ROHNERT PARK, CALIFORNIA, RECOMMENDING CITY COUNCIL  
ADOPTION OF AN ORDINANCE APPROVING THE SECOND AMENDMENT TO  
THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ROHNERT PARK  
AND PENN GROVE MOUNTAIN LLC MODIFYING THE TIMING OF  
CONSTRUCTION OF A WATER TANK WITHIN THE SOUTHEAST SPECIFIC PLAN  
AREA**

**WHEREAS**, Government Code § 65864, *et seq.*, authorizes the City of Rohnert Park to enter into development agreements which will provide certainty, definition and commitment to developers as well as to necessary public improvements required by development; and

**WHEREAS**, the applicant, Penn Grove Mountain LLC filed Planning Application proposing an amendment to its Development Agreement with the City, in accordance with the City of Rohnert Park Municipal Code ("RPMC"); and

**WHEREAS**, the proposed application would defer the requirement for construction of a water storage tank from the 50<sup>th</sup> residential building permit to the 106<sup>th</sup> residential building permit, allowing Penn Grove Mountain LLC to complete the first phase of its development more quickly; and

**WHEREAS**, City staff has evaluated the request and determined that it will accelerate the delivery of housing units without adverse impacts on the City's water system or the City's ability to provide water service; and

**WHEREAS**, Penn Grove Mountain LLC and City staff have negotiated a proposed amendment to the Development Agreement in accordance with the requirements of Government Code § 65864, *et seq.*, and Chapter 17.21, "Development Agreement Procedure," of the Rohnert Park Municipal Code ("RPMC"), and the proposed amendment is attached to this Resolution as **Exhibit A**; and

**WHEREAS**, the City Council of the City of Rohnert Park has certified the Final EIR prepared for the Project and the City has otherwise carried out all requirements for the Project pursuant to CEQA; and

**WHEREAS**, the proposed amendment will not result in any substantial changes in the project or new information of substantial importance of the kind that would require additional environmental review pursuant to Section 15162 of the CEQA Guidelines; and

**WHEREAS**, pursuant to California State Law and the RPMC, public hearing notices were mailed to all property owners within an area encompassing a three hundred foot radius of the subject property and a public hearing was published for a minimum of 10 days prior to the first public hearing in the *Community Voice*.

**WHEREAS**, on December 14, 2017, the Planning Commission held a public hearing at which time interested persons had an opportunity to testify either in support or opposition to the proposed amendments to the Development Agreement; and

**WHEREAS**, the Planning Commission has reviewed and considered the information contained in proposed amendments to the Development Agreement.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Rohnert Park makes the following findings, determinations and recommendations with respect to the proposed amendments to the Development Agreement:

**Section 1.** The above recitations are true and correct and material to this Resolution.

**Section 2.** On December 7, 2010, the City Council of the City of Rohnert Park certified the Final EIR for this Project, including adoption of associated CEQA Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program, as described in City Council Resolution No. 2010-134.

**Section 3.** Findings for Adoption of Development Agreement. The Planning Commission, in recommending approval to the City Council of Planning Application No. PLDA17-0003 Development Agreement Amendment for Southeast Specific Plan, hereby makes the following findings pursuant to Government code section 65867.5:

1. *The proposed Development Agreement Amendment was considered at a public hearing*

**Criteria Satisfied.** A duly noticed public hearing regarding the amended Development Agreement was held by the Planning Commission on December 14, 2017, in conformance with the notice provisions of Government Code §§ 65090 and 65091 and the requirements of the RPMC section 17.21.030.

2. *The provisions of the proposed Development Agreement are consistent with the general plan and any applicable specific plan*

**Criteria Satisfied.** The proposed Development Agreement amendment is consistent with the General Plan and would direct the Project's development in an orderly manner that benefits the City.

The proposed amendment would defer the construction of a required water storage tank in order to accelerate delivery of housing units. Staff has evaluated the impact of the proposed change on the City's water system and determined that it will not adversely impact water service. This determination includes evaluation of improvements made to existing chlorination pumping and the improvements resulting from the construction of the City's Water Tank #8, which was not anticipated to be complete when the development agreement condition was proposed.

Staff has also taken into consideration that acute need for housing and region and believes that this amendment, which will accelerate the delivery of the first phase of the Specific Plan, provides benefits that are consistent with City's General Plan.

3. *The provisions of the proposed Development Agreement are consistent with Government Code 65867.5(C).*

**Criteria Satisfied.** The proposed amendment to the Development Agreement satisfies the requirements of Government Code 65867.5(C) that requires that a

sufficient water supply be available for subdivisions which meet the definition of “subdivision” in Government Code 66473.7(a)(1) within the Project, as required by Government Code section 66473.7(b)(1). The City prepared a Water Supply Assessment to examine the demands of new development and assesses the City’s supply sources to meet the demands. Based on the City’s Water Supply Assessment, it was determined that sufficient sources exist to meet the demands of the City’s general plan buildout using a combination of surface water, groundwater and recycled water. The SESP is included in the City’s General Plan and, therefore, the City’s Water Supply Assessment accounts for increases in the population and use associated with the SESP development. Because the Project is consistent with the prior analysis and sufficient water supply is available for this project, no additional analysis is needed and the proposed Development Agreement satisfies the required of Government Code 65867.5(C).

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that, based on the findings set forth in this Resolution and the evidence in the staff report, the above-referenced Findings, and all other Project applications considered by the Planning Commission concurrently with the proposed Development Agreement, the Planning Commission hereby recommends that the City Council approve an amendment to the Development Agreement, substantially in the form set forth at **Exhibit A** hereto.

**DULY AND REGULARLY ADOPTED** on this 14<sup>th</sup> day of December, 2017 by the City of Rohnert Park Planning Commission by the following vote:

AYES: \_\_\_\_\_ NOES: \_\_\_\_\_ ABSENT: \_\_\_\_\_ ABSTAIN: \_\_\_\_\_

ADAMS \_\_\_\_\_ BLANQUIE \_\_\_\_\_ BORBA \_\_\_\_\_ GIUDICE \_\_\_\_\_ HAYDON \_\_\_\_\_

\_\_\_\_\_  
Susan Haydon, Chairperson, Rohnert Park Planning Commission

Attest: \_\_\_\_\_

Susan Azevedo, Recording Secretary

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

(Space Above This Line for Recorder's Use Only)  
Exempt from recording fee per Gov. Code § 27383

## SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT ("**Second Amendment**") is entered into as of \_\_\_\_\_, 2017, by and among PENN GROVE MOUNTAIN, LLC, a California Limited Liability Company ("**Developer**") and the CITY OF ROHNERT PARK, a California municipal corporation ("**City**"). City and Developer are sometimes referred to herein as a "**Party**" and collectively as "**Parties.**"

### RECITALS

A. The City of Rohnert Park and Redwood Equities, LLC, Developer's predecessor-in-interest ("**Redwood Equities**"), entered into that certain Development Agreement, as of December 7, 2010 and recorded on December 15, 2010, as Instrument No. 2010114199 in the Official Records of Sonoma County ("**Original Development Agreement**"), with respect to that certain real property described therein and in Exhibit A, attached hereto and incorporated herein by this reference (the "**Property**").

B. Thereafter, the City and Redwood Equities entered into that certain First Amendment to Development Agreement dated December 9, 2014 and recorded on September 29, 2015, as Instrument No. 2015085465 in the Official Records of Sonoma County to revise the specifications for the water tank in Section 4.12(c) of the Original Development Agreement (the "**First Amendment**"). The Original Development Agreement as amended by the First Amendment may be referred to herein as the "**Development Agreement.**"

C. On September 9, 2016, Redwood Equities and Developer entered into an Assignment and Assumption Agreement recorded in the Official Records of Sonoma County as Instrument No. 2017039425, whereby Redwood Equities assigned all rights and obligations of the Development Agreement to Developer and Developer assumed all rights and obligations of the Development Agreement.

D. The Parties now desire to enter into this Second Amendment to Development Agreement to modify the time by which Developer must construct the water tank to prior to the issuance of the one-hundred and sixth (106<sup>th</sup>) residential building permit.

## AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Defined Terms. All capitalized terms used and not otherwise defined in this Second Amendment shall have the same meaning as in the Development Agreement.

2. Amendment of Section 4.12(C) of the Development Agreement. Section 4.12(C) of the Development Agreement is hereby amended in its entirety as follows:

“C. Water Storage Tank. Prior to issuance of the one-hundred and sixth (106<sup>th</sup>) residential building permit for the Property, Developer shall construct and install a water storage tank that will store 360,000 gallons of water, or other appropriate size, as determined by City so long as the tank meets the City’s minimum storage requirements and is consistent with the EIR, Statement of Overriding Considerations, and MMRP. The location of the water storage tank is set forth in Exhibit E and the specifications for the water tank are set forth in Exhibit F. Developer and City may revise Exhibits E and F without formally amending this Development Agreement, so long as any revisions are consistent with the EIR, Statement of Overriding Considerations, and MMRP and comply with all applicable laws, regulations and City requirements. The water storage tank shall comply with all standards set forth in the California Building Code in effect at the time the tank is constructed. Developer shall dedicate the water storage tank to City upon its completion.”

3. Effect of Amendment. Except to the extent the Development Agreement is modified by this Second Amendment, the remaining terms and provisions of the Development Agreement shall remain unmodified and in full force and effect. In the event of a conflict between the terms of the Development Agreement and the terms of this Second Amendment, the terms of this Second Amendment shall prevail.

4. Counterparts. This Second Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment.

*[SIGNATURES ARE ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, this Second Amendment has been entered into by and between Developer and City as of the day and year first above written.

**CITY:**

City of Rohnert Park, a California municipal corporation

By: \_\_\_\_\_  
City Manager

Approved as to Form:

By: \_\_\_\_\_  
City Attorney

Attest:

By: \_\_\_\_\_  
City Clerk

**DEVELOPER:**

Penn Grove Mountain, LLC

a \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_



## 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 CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, Notary Public, 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)

\*\*\*\*\*

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 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, Notary Public, 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)

Exhibit A

Legal Description of the Property

[to be inserted]