

RESOLUTION NO. 2014-124

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING TWO OFF-SITE PUBLIC IMPROVEMENT AGREEMENTS WITH THE UNIVERSITY DISTRICT, LLC AND VAST OAK PROPERTIES L.P. FOR (1) THE ROHNERT PARK EXPRESSWAY PHASE 1 UTILITY AND INTERSECTION IMPROVEMENT PROJECT AND (2) THE ROHNERT PARK EXPRESSWAY PHASE 2 UTILITY AND INTERSECTION IMPROVEMENT PROJECT AND FINDING THESE PROJECTS COVERED BY THE UPDATED FINAL ENVIRONMENTAL IMPACT REPORT FOR THE UNIVERSITY DISTRICT SPECIFIC PLAN PROJECT AS AMENDED

WHEREAS, on May 23, 2006, the City Council of the City of Rohnert adopted Resolution No 2006-141 approved the Final Environmental Impact Report (EIR) for the University District Specific Plan including a draft EIR, a recirculated draft EIR, responses to comments, changes, clarifications and corrections to the draft EIR, and recirculated draft EIR and appendices (together the "2006 EIR"); and

WHEREAS, on April 8, 2014 the City Council of the City of Rohnert Park adopted Resolution No. 2014-032 approving an addendum to the 2006 EIR (together with the 2006 EIR collectively called the "Updated Final EIR"); and

WHEREAS, on April 8, 2014, the City Council of the City of Rohnert Park adopted Resolution No. 2014-035, approving the Tentative Map for the University District Vast Oak Property, prepared by MacKay & Soms and dated February 2014 (the "Tentative Map"), subject to certain conditions of approval; 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 ("Developers"); and

WHEREAS, the conditions of approval of the Tentative Map ("Conditions of Approval") require the Improvement Plans for the first phase of development ("first Final Map") to include the construction/widening of the north side of Rohnert Park Expressway from Snyder Lane to Petaluma Hill Road; and

WHEREAS, the Development Agreement requires the construction/widening of the north side of Rohnert Park Expressway from Snyder Lane to Petaluma Hill Road to begin prior to the issuance of the twenty-fifth (25th) market rate building permit; and

WHEREAS, the Development Agreement requires that this construction be complete within 12 to 18 months, depending on the season in which construction begins; and

WHEREAS, the Developers have submitted plans, specifications and drawings ("Improvement Plans") for the first two phases of the construction/widening of the north side of Rohnert Park Expressway; and

WHEREAS, the Improvement Plans for these first two phases have been reviewed by the City Engineer and have been determined to be technically accurate and in conformance with the Conditions of Approval; and

WHEREAS, the Developer has posted performance and labor and materials bonds in the amount of \$928,900 to cover the construction of the Rohnert Park Expressway Phase 1 Utility and Intersection Improvement Project; and

WHEREAS, the Developer will post performance and labor and materials bonds in the amount of \$468,080 to cover the construction of the Rohnert Park Expressway Phase 2 Utility and Intersection Improvement Project in the near future; and

WHEREAS, the City and Developer desire to enter into Improvement Agreements for all the proposed construction to more thoroughly define the terms and conditions of the construction and dedication obligations under the Conditions of Approval and Development Agreement; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize and approve the Improvement Agreements with the University District LLC and Vast Oak Properties L.P. for (1) the Rohnert Park Expressway Phase 1 Utility and Intersection Improvement Project (Attachment 1) and (2) the Rohnert Park Expressway Phase 2 Utility and Intersection Improvement Project (Attachment 2).

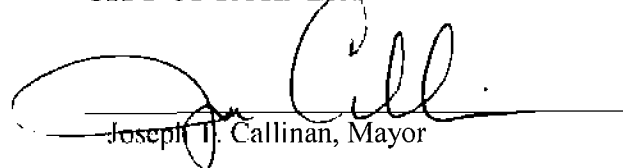
BE IT FUTHER RESOLVED that, based on the evidence presented at the duly noticed public meeting of October 14, 2014, the City Council of the City of Rohnert Park finds that these projects were adequately described and mitigated in the Updated Final EIR, including any addenda and that no other CEQA analysis is warranted.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the Improvement Agreements, in substantially similar form to those agreements attached hereto and incorporated by this reference as Attachments 1 and 2 respectively, subject to minor modification by the City Manager or City Attorney.

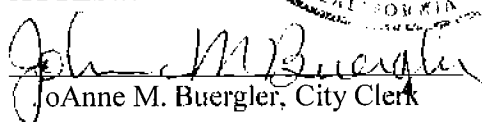
DULY AND REGULARLY ADOPTED this 14th day of October, 2014.



CITY OF ROHNERT PARK


Joseph T. Callinan, Mayor

ATTEST:


JoAnne M. Buerger, City Clerk

BELFORTE: ABSENT MACKENZIE: AYE STAFFORD: AYE AHANOTU: AYE CALLINAN: AYE
AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

Attachment 1 to Resolution

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.

**OFFSITE PUBLIC IMPROVEMENT AGREEMENT
BY AND BETWEEN THE CITY OF ROHNERT PARK
AND UNIVERSITY DISTRICT LLC AND VAST OAK PROPERTIES L.P.
FOR THE ROHNERT PARK EXPRESSWAY PHASE 1 UTILITY AND INTERSECTION
IMPROVEMENT PROJECT**

THIS OFFSITE PUBLIC IMPROVEMENT AGREEMENT (the "Agreement") is made and entered into on this ____ day of _____ 2014 (the "Effective Date") by and between UNIVERSITY DISTRICT LLC, a Delaware limited liability corporation , AND VAST OAK PROPERTIES L.P., a California limited partnership ("Developer"), and the CITY OF ROHNERT PARK, a California municipal corporation ("City"), with reference to the following facts and intentions:

R E C I T A L S

A. On April 8, 2014, the City Council of the City of Rohnert Park adopted Resolution No. 2014-035, approving the Tentative Map for the University District Vast Oak Property, prepared by MacKay & Soms and dated February 2014 (the "Tentative Map"), subject to certain conditions of approval (the "Conditions").

B. On April 22, 2014, the City Council of the City of Rohnert Park adopted its Ordinance No. 878 approving a Development Agreement with the Developer (the "Development Agreement")

C. Both the Conditions and the Development Agreement require that Improvement Plans for the first phase of development (the "first Final Map") include the construction/widening of the north side Rohnert Park Expressway between Snyder Lane and Petaluma Hill Road.

D. The Developer has submitted plans, specifications and drawings for the first phases of the required construction and widening, which were prepared by MacKay & Soms, Inc., and titled *Utility Improvement Plans, Rohnert Park Expressway, Snyder Lane to Petaluma Hill Road, Phase 1 and 2, September 2014*, 13 Sheets (Sheets 1-13; hereafter the "Phase 1 and Phase 2 Utility Improvements") and *Improvement Plans for Rohnert Park Expressway Intersection with Kerry Road/ Twin Creeks Drive/ Kells Road, September 2014*, 8 Sheets (Sheets C1-C8; hereafter the "Intersection Improvements"). Together these plans, specifications and drawings are the "Improvement Plans".

E. The Improvement Plans are on file in the office of the City Engineer and were approved by the City Engineer on the ____ day of _____ 2014.

F. The Developer wishes to begin the construction illustrated on the Improvement Plans and to complete that construction in phases.

G. Developer has requested an encroachment permit to construct the Rohnert Park Expressway Phase 1 Utility and Intersection Improvements (hereafter "Improvements"), which are more specifically depicted on the map, which is attached hereto as Exhibit 1, and located in the public right-of-way and which are a portion of the improvements required by the Conditions to be completed in advance of filing the first final map.

H. City and Developer desire to enter an agreement providing for the construction and installation of the Improvements in accordance with the plans, specification and drawings described in Recital D.

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, together with the Conditions and the requirements of Chapter 16.16 of the RPMC, are hereby incorporated into and form a material part of this Agreement

2. Purpose; Effective Date

2.1 Purpose. The purpose of this Agreement is to guarantee completion of the Improvements and ensure satisfactory performance by Developer of Developer's obligations to satisfy the Conditions.

2.2 Effective Date. The Effective Date of this Agreement shall be as set forth above.

3. Property Subject to Agreement. The property which is the subject of this Agreement is located in the City of Rohnert Park, Sonoma County, California, and is described in Exhibit 2, attached hereto and incorporated by this reference.

4. Improvements

4.1 Duty to Install Improvements. Developer will design, construct, install and complete, or cause to be constructed, installed and completed, at the Developer's sole cost and expense, the Improvements, in accordance with the Improvement Plans and to the satisfaction of the City Engineer, in his/ her reasonable discretion. Developer will also supply all labor and materials therefor, all in strict accordance with the terms and conditions of this Agreement. The construction, installation and completion of the Improvements including all labor and materials furnished in connection therewith are hereinafter referred to collectively as the "Work."

City shall not be responsible or liable for the maintenance or care of the Improvements unless and until City formally approves and accepts them in accordance with its policies and procedures. City shall exercise no control over the Improvements unless and until approved and accepted. Any use by any person of the Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Improvements. Developer shall maintain all the Improvements in a state of good repair until they are completed by Developer and approved and accepted by City. Such maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters,

sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. Prior to undertaking said maintenance work, City agrees to notify Developer in writing of the deficiencies and the actions required to be taken by the Developer to cure the deficiencies. Except in an emergency, Developer shall have thirty (30) days from the date of the notice within which to correct, remedy or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then the Developer shall have twenty-four (24) hours to correct, remedy or cure the deficiency. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Improvements or their condition prior to acceptance.

4.2. Completion Date. Developer will complete the Work within one year of the Effective Date or as required by the Amended and Restated Development Agreement between the City and Developer, whichever is sooner. All Work will be completed in a good and workmanlike manner in accordance with accepted design and construction practices. This completion date may be extended by the City in its sole and absolute discretion at the request of Developer, which request shall be accompanied by a written assurance acceptable to the City Attorney that the securities required by Section 6 shall remain enforceable throughout the term of the extension.

4.3. Estimated Cost of Work. The estimated cost of the Work is Nine-hundred, Twenty-eight Thousand and Nine Hundred Dollars (\$928,900.00). Notwithstanding this estimate, Developer hereby acknowledges and agrees that (a) the actual costs to complete the Work may significantly exceed this estimate, (b) this estimate in no way limits Developer's financial obligation, and (c) that Developer is obligated to complete the Work at its own cost, expense, and liability.

4.4. Modifications to the Plans. Approval of this Agreement by City does not release Developer of its responsibility to correct mistakes, errors, or omissions in the Improvement Plans. If, at any time, in the opinion of the City Engineer, in his/her reasonable discretion, the Improvement Plans are deemed inadequate in any respect Developer agrees to make such modifications, changes or revisions as necessary in order to complete the Work in a good and workmanlike manner in accordance with accepted design and construction standards.

4.5. Foreman or Superintendent. Developer shall give personal attention to the Work. A competent foreman or superintendent, satisfactory to the City Engineer, in his/her reasonable discretion, with authority to act for and on behalf of Developer, shall be named in writing by Developer prior to commencement of the Work, shall be present on the Property during the performance of the Work, and may not be changed without the advance notification to and satisfaction and concurrence of the City Engineer.

4.6. Encroachment Permits. Developer shall obtain, at its sole cost and expense, any encroachment permits required by the City in order to perform the Work.

4.7. Commencement of Construction and Inspection. Developer and its contractor or subcontractors shall not commence construction of the Improvements until Developer has received written authorization from City to proceed. Written authorization shall be in the form of signed approved plans along with permit issuance, including any encroachment permit required to carry on construction activities in the City's right-of-way as described in Section 4.6. All work

performed on the Improvements shall be done in strict compliance with the City approved plans, specifications and the contract documents and in a good and workmanlike manner. All work performed by Developer, its contractor or agents to construct the Improvements shall be subject to inspection and approval by City. All fees and costs to construct the Improvements shall be borne solely by Developer (including the applicable Inspection Fee in accordance with the City's adopted Engineering Fee Schedule). Inspection by City or its employees or agents shall not relieve Developer of its liability for design defects or improper or inadequate workmanship.

4.8. Examination of Work. All of the Work shall be performed to the satisfaction of the City Engineer, in his/her reasonable discretion. The City and its authorized agents shall, at all times during the performance of the Work, have free access to the Work and shall be allowed to examine the Work and all materials used and to be used in the Work.

4.9. City's Inspection, Administration and Testing Costs. Developer shall pay to City the actual cost for all inspection, administration and testing services furnished by City in connection with this Agreement, including those performed by consultants under contract with the City (the "City Costs"). City agrees not to double charge Developer (through the imposition of both a processing fee and a consultant charge) for any individual monitoring, inspection, testing or evaluation service. In addition, City agrees to limit its use of outside consultants to those reasonably necessary or desirable, as determined by the City Manager or his designee in his reasonable discretion, to accomplish the requisite inspection, administration and monitoring. The estimated cost for the inspection, administration and testing services is Thirteen Thousand, Nine Hundred Thirty Three Dollars and 50 cents (\$13,933.50) (the "Estimated Cost"). Concurrently with the execution of this Agreement, Developer shall deposit an amount equal to the Estimated Cost with City for the payment of the City Costs. Notwithstanding this estimate, Developer hereby acknowledges and agrees that (a) the actual costs to accomplish the requisite inspection, administration and monitoring may significantly exceed this estimate, (b) this estimate in no way limits Developer's financial obligation, and (c) that Developer is obligated to reimburse the City for its actual cost, expense, and liability associated with said inspection, administration and monitoring. In the event that the Estimated Cost is insufficient to cover the actual City Costs incurred, Developer shall, upon notice in writing by the City Engineer, deposit such additional amount as may be required to pay the City Costs. Any amount of the Estimated Cost, initial deposit or additional amounts deposited remaining after payment of all City Costs will be returned to Developer. City may, at its discretion, deposit such funds in an interest-bearing account and retain any and all interest earned.

4.10 No Waiver by City. Inspecting of the work and/or materials, or approval of work and/or materials, or a statement by an officer, agent or employee of the City indicating the work complies with this Agreement, or acceptance of all or any portion of the work and/or materials, or payments thereof, or any combination of all of these acts shall not relieve Developer or its obligation to fulfill this Agreement; nor is the City by these acts prohibited from bringing an action for damages arising from the failure to comply with this Agreement.

4.11. Erosion Control. Pursuant to Rohnert Park Municipal Code Chapter 15.52, Developer shall be responsible for the control of erosion on the Property and shall prevent its entry into the storm drainage system.

4.12 Prevailing Wages. The work of the Improvements constitutes a "public work" as defined in the California Labor Code, section 1771, *et seq* ("Labor Code Regulations"). Developer agrees and acknowledges that the construction of the Improvements is subject to the payment of prevailing wages and agrees to comply with the requirements of the Labor Code Regulations. Further, Developer agrees to defend, indemnify and hold City, its elected officials,

officers, employees, and agents free and harmless from any and all claims, damages, suits or actions arising out of or incident to Developer's obligations under this section. Developer agrees to satisfy, to the extent applicable, its obligation of registering with the Department of Industrial Relations and furnishing electronic certified payroll records to the Labor Commissioner pursuant to Senate Bill 854 (2014).

4.13. Contractor Licenses. All work performed on the Improvements shall be done only by contractors licensed in the State of California and qualified to perform the type of work required and comply with the City's Business License Ordinance.

4.14. Repair of Work Damaged During Construction. Developer agrees to repair or have repaired in a timely manner at its sole cost and expense all public roads, streets, or other public or private property (both real and personal) damaged as a result of or incidental to the Work or in connection with the development of the Property or to pay to the property owner of any damaged road, street or property the full cost of such repair. In addition, Developer shall obtain the written acceptance of such repair or payment from any owner whose private property was repaired by Developer or to whom Developer has paid the full cost of such repair in accordance with this Section 4.14. City shall be under no obligation whatsoever to accept the Work completed under this Agreement until such time as all repairs have been completed or have been paid for and written acceptances have been provided to the City Engineer, except as otherwise provided in section 4.18.1

4.15. Payments. Developer agrees that it will pay, when due, all those furnishing labor or materials in connection with the Work. Developer further agrees that pursuant to Government Code section 66499.7, the Labor and Materials Bond provided by Developer in accordance with Section 6.1.2 of this Agreement shall not be released if any mechanics liens or stop notices are outstanding, unless said liens are released by bond in compliance with Civil Code section 3143.

4.16. Liability for Work Prior to Formal Acceptance. Until the City Council has formally accepted the Improvements, Developer shall be solely responsible for all damage to the work, regardless of cause, and for all damages or injuries to any person or property at the work site, except damage or injury due to the sole negligence of City, or its employees. Developer shall replace or repair any portion of the Improvements that have been destroyed or damaged prior to final acceptance of completed work by the City Council or the City Engineer. Any such repair or replacement shall be to the satisfaction and subject to the approval of the City Engineer. Developer shall repair to the satisfaction of the City Engineer any damage to the utilities systems, concrete work, street paving or other public improvements that may occur in connection with the Improvements work.

4.17. Completion of Work. After Developer (a) completes the Work in accordance with the Improvement Plans and the terms and conditions of this Agreement, (b) repairs any road, street, or private or public property damaged as a result of the Work or pays the full cost of such repair to the owner whose property was damaged and (c) obtains the written acceptance of such repair or payment from any owner whose private property was repaired by Developer or to whom Developer paid the full cost of such repair, Developer will provide City with a written notice of completion, together with copies of all written acceptances.

4.18. Final Acceptance.

4.18.1 Notice of Completion. Within thirty (30) days of receipt of Developer's written notification pursuant to Section 4.17 above, City Engineer shall inspect the Work and repairs

and review the written acceptances, if any, and send Developer a written notice stating whether the Work and repair are complete to the satisfaction of the City Engineer, in his/her reasonable discretion, and whether the written acceptances have been provided. If the Work and repair are, in the opinion of the City Engineer, not complete and satisfactory, and/or written acceptances have not been provided, the City Engineer will list the deficiencies that must be corrected to find the Work and repair complete and satisfactory. Upon satisfactory completion of the Work and repair and submittal of written acceptances, the City Engineer will send Developer a written notice of satisfactory completion. The requirement for written acceptances may be waived by the City Engineer, in his/her reasonable discretion, if Developer has made commercially reasonable efforts to obtain such acceptances. City Engineer's failure to respond to Developer's written notification within thirty (30) days will not be deemed a breach or default under this Agreement.

4.18.2 Acceptance of Improvements. After sending Developer a written notice of satisfactory completion pursuant to Section 4.18.1, the City Engineer will recommend acceptance of the Improvements, or a portion thereof, to the City Council. In conjunction with such recommendation, the City Engineer will recommend the acceptance of the offers of dedication shown on the final map for the Property. The acceptance of the Improvements, offers of dedication and right-of-way and easements, if any, shall be by resolution. Upon adoption of such resolution, the City Engineer shall record a notice of acceptance, in a form to be approved by the City Attorney, in the Official Records of Sonoma County.

4.19. Warranty Period; Repair and Reconstruction. Without limiting the foregoing, Developer expressly warrants and guarantees all Work performed under this Agreement and all materials used in the Work for a period of one (1) year after the date of recordation of the notice of acceptance of the improvements in accordance with Section 4.18. If, within this one (1) year period, any Improvement or part of any Improvement installed or constructed, or caused to be installed or constructed by Developer, or any of the work done under this Agreement, fails to fulfill any of the requirements of the Improvement Plans or this Agreement, Developer shall, without delay and without cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Work or Improvement to the satisfaction of the City Engineer. Should Developer fail to act promptly, by failing to repair, replace or reconstruct work thirty (30) days after notification by City, or in accordance with this requirement, or should the exigencies of the situation require repairs, replacements or reconstruction to be made before Developer can be notified, City may, at its option, make the necessary repairs, replacements or perform the necessary reconstruction and Developer shall pay to the City upon demand the actual cost of such repairs, replacements or reconstruction.

4.20. Record Drawings. Upon completion of the Improvements and prior to final acceptance by the City Council, Developer shall deliver to City one electronic file, in a format specified by the City Engineer, and one mylar copy of "as-built" drawings. These drawings shall be in a form acceptable to the City Engineer, shall be certified by an engineer licensed by the State of California as to accuracy and completeness, and shall reflect the Improvements as actually constructed, with any and all changes incorporated therein. Developer shall be solely responsible and liable for ensuring the completeness and accuracy of the record drawings.

4.21. Ownership of Improvements. From and after acceptance of the Improvements by formal action of the City Council, ownership of the Improvements shall be vested exclusively in City.

5. Community Facilities District; Intent to Reimburse. City and Developer acknowledge that each is working with the California Statewide Communities Development

Authority to form a Community Facilities District to fund the construction of some of the infrastructure required by the Amended and Restated Development Agreement between Developer and City. City and Developer acknowledge that the Improvements are in the category of infrastructure that is potentially eligible for funding through a Community Facilities District and that Developer's costs may be reimbursed with the proceeds of Community Facilities District bonds at some future date.

6. Security.

6.1 Performance, Labor and Materials and Warranty Security. In accordance with Sections 16.16.060 through 16.16.070 of the Rohnert Park Municipal Code, Developer will furnish and deliver to City, within the times set forth below, the following surety bonds, each of which must be issued by a surety company duly and regularly authorized to do general surety business in the State of California, or an irrevocable assignment of funds or letter of credit as may be acceptable to the City Attorney.

6.1.1 Performance Security. Developer shall furnish and deliver performance security in the amount of Nine-hundred, Twenty-eight Thousand and Nine-hundred Dollars (\$928,900.00), concurrently with the execution of this Agreement, which must meet the requirements of Government Code Section 66499.1, if applicable, and Rohnert Park Municipal Code Section 16.16.070 and be acceptable to the City Attorney. The security shall be conditioned upon the faithful performance of this Agreement with respect to the Work and shall be released by the City effective upon the date of recordation of the notice of acceptance of the improvements as described in Section 4.18.2 and Developer's delivery of the Warranty Security described in Section 6.1.3.

6.1.2 Labor and Materials Security. Developer shall furnish and deliver labor and materials security in the amount of Nine-hundred, Twenty-eight Thousand and Nine-hundred Dollars (\$928,900.00), concurrently with the execution of this Agreement which security must meet the requirements of Government Code Section 66499.2, if applicable, and Rohnert Park Municipal Code Section 16.16.070 and be acceptable to the City Attorney. The security shall secure payment to the contractor(s) and subcontractor(s) performing the Work and to all persons furnishing labor, materials or equipment to them. The City shall retain each security until both (i) the City accepts the Work in accordance with Section 4.18 above and (ii) the statute of limitations to file an action under Civil Code section 3114 *et seq.* has expired. After said date, the security may be reduced by the City Engineer to an amount not less than the total amount claimed by all claimants for whom claims of lien have been recorded and notice given in writing to the City Council. The balance of the security shall be retained until the final settlement of all such claims and obligations. If no such claims have been recorded, the security shall be released in full by the City Engineer.

6.1.3. Warranty Security. Developer shall furnish and deliver warranty security in the amount specified in section 16.16.070 c. of the Rohnert Park Municipal Code. The amount of One Hundred Thirty Nine Thousand, Three Hundred and Thirty Five Dollars (\$139,335.00) shall be provided upon acceptance of the Improvements and prior to release of the Performance Security. The security shall be in a form acceptable to the City Attorney and shall guarantee and warranty the Work for a period of one (1) year following the date of recordation of the notice of acceptance of the improvements against any defective work or labor done, or defective materials furnished.

6.2. Additional Security. If either upon execution of this Agreement or during the course of performance the City considers that it is necessary to have Developer post additional security, the City may require either a cash deposit or a surety bond guaranteeing performance in a form and signed by sureties satisfactory to it. The condition of the security shall be that if Developer fails to

perform its obligation under this Agreement, the City may in the case of a cash bond act for it using the proceeds or in the case of a surety bond require the sureties to perform the obligations of the Agreement.

7 Indemnity and Insurance.

7.1 Indemnification. Developer agrees to indemnify, defend and hold the City, its elective and appointed boards, commissions, officers, agents, employees and consultants, harmless from and against any and all claims, liabilities, losses, damages or injuries of any kind (collectively, "Claims") arising out of Developer's, or Developer's contractors', subcontractors', agents' or employees', acts, omissions, or operations under this Agreement, including, but not limited to, the performance of the Work, whether such acts, omissions, or operations are by Developer or any of Developer's contractors, subcontractors, agents or employees, except to the extent such Claims are caused by the sole negligence or willful misconduct of the City. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. Developer shall defend the City as required by California Civil Code Section 2778, and with counsel reasonably acceptable to the City developer shall have no right to seek reimbursement from City for the costs of defense.

The aforementioned indemnity shall apply regardless of whether or not City has prepared, supplied or approved plans and/or specifications for the Work or Improvements and regardless of whether any insurance, workers compensation, disability or other employee benefit acts or terms required under this Agreement are applicable to any Claims. The City does not and shall not waive any of its rights under this indemnity provision because of its acceptance of the bonds or insurance required under the provisions of this Agreement. Developer's obligation to indemnify City shall survive the expiration or termination of this Agreement.

Developer agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-contractor or any other person or entity involved by, for, with or on behalf of Developer in the performance of this Agreement. In the event Developer fails to obtain such indemnity obligations from others as required here, Developer agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

7.2. Insurance. Developer shall maintain Commercial General Liability Insurance protecting the City from incidents as to bodily injury liability and property damage liability that may occur as a result of the Work and additional repairs. Developer shall provide certificate(s) of insurance and endorsements to City before any Work commences. The insurance policy shall, at a minimum, contain, or be endorsed to contain, the following provisions:

- (1) The City, its officers, elected officials, employees, consultants, agents and volunteers are to be covered as additional insured's as respects to liability arising out of activities performed by or on behalf of Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, elected officials, employees, consultants, agents and volunteers.
- (2) The amounts of public liability and property damage coverage shall not be less than \$3,000,000 (Three Million Dollars) per occurrence for bodily injury, personal injury and property damage.

- (3) The insurance shall be maintained in full force until the work has been completed to the satisfaction of the City Engineer.
- (4) The insurance policy shall provide for 30 days' notice of cancellation to the City. The policy shall not be cancelled earlier than nor the amount of coverage be reduced earlier than thirty (30) days after the City receives notice from the insurer of the intent of cancellation or reduction.
- (5) Any failure to comply with the reporting provisions of the policy shall not affect the coverage provided to the City, its officers, elected officials, employees, consultants, agents and volunteers.
- (6) Developer's insurance coverage shall be primary insurance as respects the City, its officers, elected officials, employees, consultants, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, elected officials, employees, consultants, agents and volunteers shall be in excess of Developer's insurance and shall not contribute to it.
- (7) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.
- (8) Developer and Developer's insurance company agree to waive all rights of subrogation against City, its officers, elected officials, employees, agents and volunteers for losses paid under Developer's workers' compensation insurance policy which arise from the work performed by Developer.
- (9) Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, and include a "separation of insureds" or "severability" clause which treats each insured separately, except with respect to the limits of the insurer's liability (cross-liability endorsement).
- (10) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverages requirements and/or limits shall be available to the Additional Insured, including but not limited to any umbrella or excess insurance. Furthermore, the requirements for coverage and limits shall be the greater of: (a) the minimum coverage and limits specified in this Agreement; or (b) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

In the event that Developer's insurance is cancelled, Developer shall provide replacement coverage or all work must cease as of the cancellation date until replacement insurance coverage is provided.

If Developer fails to maintain insurance coverage or provided insurance documentation which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. City, at its sole option, may terminate this Agreement and obtain damages from Developer resulting from said

breach. Alternatively, City may purchase the required insurance coverage, and without further notice to Developer, may deduct from sums due to Developer any premium costs advanced by City for such insurance. These remedies shall be in addition to any other remedies available to City.

7.3. Workers' Compensation Insurance. Developer shall provide, or cause to be provided, Workers' Compensation insurance as required by law, and shall cause its contractors and their subcontractors, agents and representatives to also maintain Workers' Compensation insurance as required by law. No Work shall commence until such Workers' Compensation insurance is obtained and in full force and effect.

7.4. Other Insurance Requirements. Developer shall:

- (1) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance which shall clearly evidence all insurance required in this section and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on thirty (30) days prior written notice to City.
- (2) Provide to City certified copies of endorsements and policies if requested by City, and properly executed certificates of insurance evidencing the insurance required herein.
- (3) Replace or require the replacement of certificates, policies and endorsements for any insurance required herein expiring prior to completion and acceptance of the Improvements.
- (4) Maintain all insurance required herein from the time of execution of this Agreement until the acceptance of the Improvements.
- (5) Place all insurance required herein with insurers licensed to do business in California.

8. Breach of Agreement; Opportunity to Cure; Remedies.

8.1. 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 the Work within the time set forth herein or abandons the Work.
- (2) Developer assigns the Agreement without the prior written consent of City.
- (3) 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.
- (4) Developer or Developer's contractors, subcontractors, agents or employees, fail to comply with any terms or conditions of this Agreement.
- (5) Any delay in the construction of any portion of the Work or repairs, which in the reasonable opinion of the City Engineer, endangers public or private property.

The City may serve written notice of breach and default upon Developer and the financial institution holding the security.

8.2. Breach of Agreement; Performance by City. If the City gives Developer notice, under Section 8.1, of breach and default of this Agreement, the City may proceed to complete the Work by contract or other method the City considers advisable, at the sole expense of Developer. Developer, immediately upon demand, shall pay the costs and charges related to the Work and any subsequent repairs. City, without liability for doing so, may take possession of and utilize in completing the Work and repairs, if any, such materials and other property belonging to Developer as may be on or about the Property and necessary for completion of the work. In the event of default, the financial institution holding the security shall be liable to City to pay the face amount of the bonds, as specified under Section 6.

8.3. Remedies. City may bring legal action to compel performance of this Agreement and recover the costs of completing the Work and/or repairs, if any, including City's administrative and legal costs. Developer agrees that if legal action is brought by City under this section of the Agreement, Developer shall pay all of the costs of suit; reasonable attorney fees, arbitration costs and such other costs as may be determined by the court or arbitrator. 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.

9. Miscellaneous.

9.1 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.

9.2. 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: Mr. Craig R. Harrington

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.

9.3 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.

9.4 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.

9.5 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.

9.6 Transfers; Assignments. Developer may assign its obligations under this Agreement to successor owner(s) of the Site 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.

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

9.8 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.

9.9 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.

9.10 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.

9.11. 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 9.6, in which event this Agreement shall remain binding upon Developer.

9.12. 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.

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

10.15. 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.

10.16. 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.

10.17. 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.

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

"CITY"

CITY OF ROHNERT PARK, a California
municipal corporation

Dated: _____

By: _____
City Manager

Per Resolution No. 20____-____ adopted by the Rohnert Park
City Council at its meeting of _____ (date)_____.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Dated: _____

"DEVELOPER"
University District LLC,

By: _____
Kevin Pohlson,
Vice President

By: _____
Dave Luebkehan,
Chief Financial Officer

Vast Oak Properties L.P.

By: _____
Craig R. Harrington
General Partner

ACKNOWLEDGMENT

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

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)

[illegible]

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

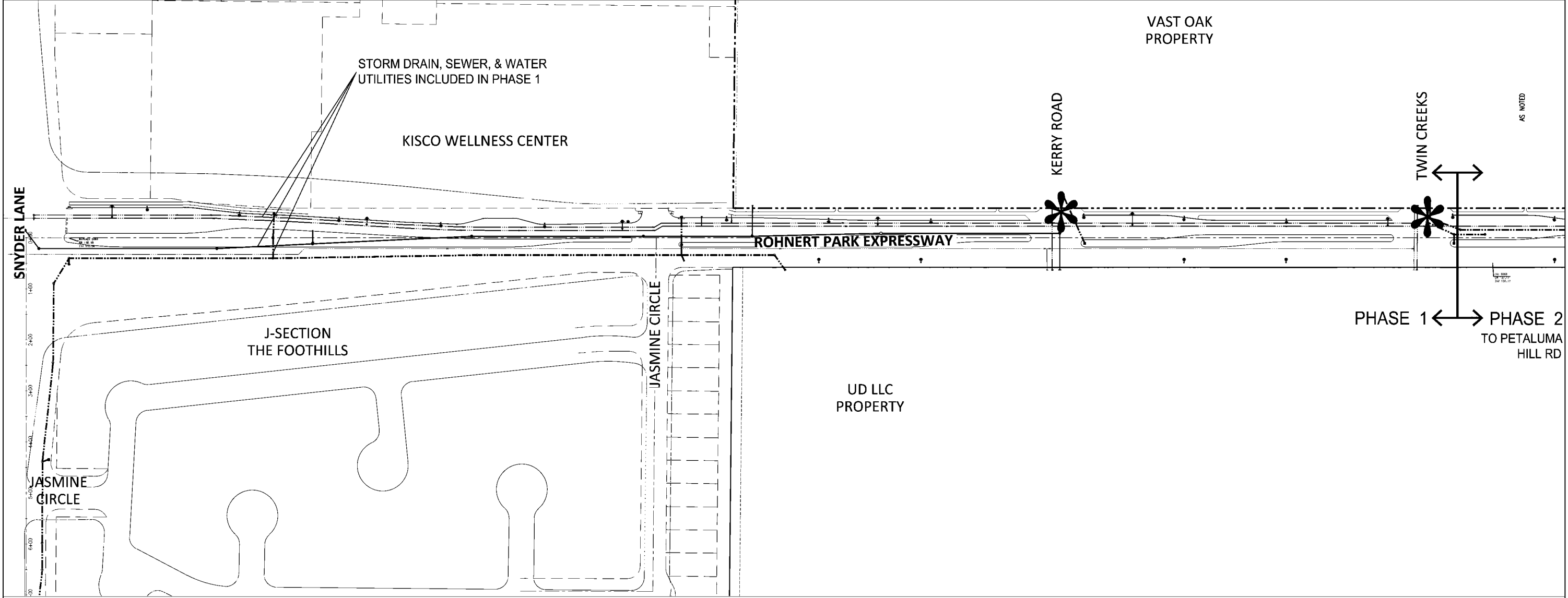
personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on 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)

Agreement
Exhibit 1
Phase 1



NTS

LEGEND



INTERSECTION IMPROVEMENTS INCLUDED WITHIN PHASE 1

NOTE: KELLS ROAD INTERSECTION INITIAL IMPROVEMENTS TO BE COMPLETED IN PHASE 1. REMAINING IMPROVEMENTS TO BE COMPLETED DURING PHASE 2.

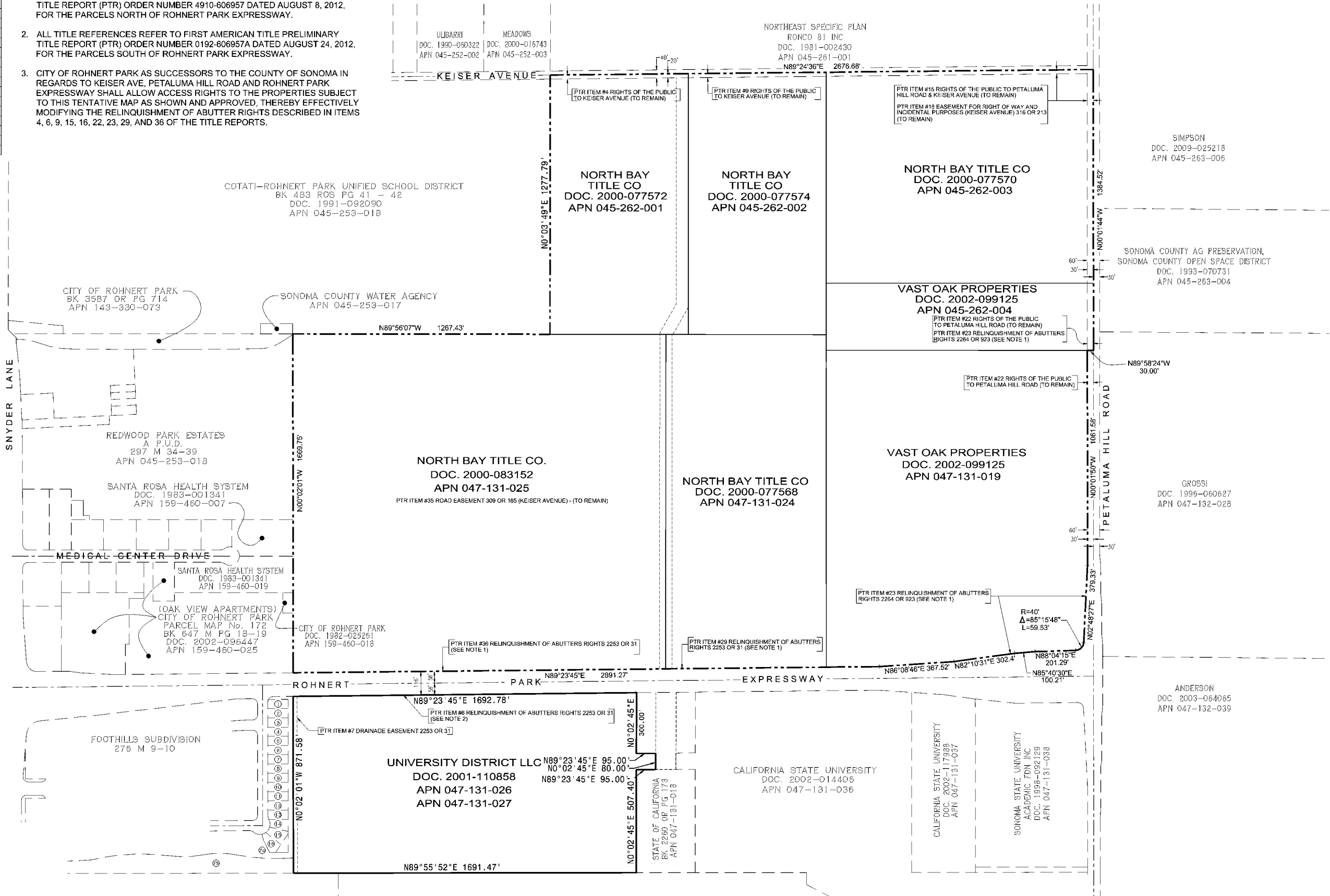
Agreement
Exhibit 2
Property Covered by Agreement



①	APN #	OWNER
①	158-220-001	SULLIVAN DAVID M & ERINDERA TR
②	158-220-002	LALAS LEILA B & LALAS HERMIE
③	158-220-003	PIPPON BARRY W
④	158-220-004	KING PAULETTE
⑤	158-220-005	NAVARRETE FRANCISCO V & JOSEFINA C
⑥	158-220-006	LOCHMAN KATHLEEN ELIZABETH TR
⑦	158-220-007	TIETZ RONALD GEORGE & NANCY LEE
⑧	158-220-008	WALLACE JILLIAN A & WALLACE CHRISTOPHER J
⑨	158-220-009	CRYER STEVEN R & GERHARDT LESLIE E
⑩	158-220-010	LALAS LEILA B & HERMIE W
⑪	158-220-011	ROBERTS PHILLIP P
⑫	158-220-012	BARTLETT HELENE G TR
⑬	158-220-013	MAC KENZIE IAN & MAC KENZIE JILL
⑭	158-220-014	MILLER ROBERT E & SMITH-MILLER PAMELA K
⑮	158-220-015	MCLEAN KENNETH B & JULIE L
⑯	158-220-016	MCCORMACK NATEE M & DENNIS G
⑰	158-220-074	CITY OF ROHNERT PARK
⑱	158-220-075	CITY OF ROHNERT PARK

NOTES

- ALL TITLE REFERENCES REFER TO FIRST AMERICAN TITLE PRELIMINARY TITLE REPORT (PTR) ORDER NUMBER 4910-606957 DATED AUGUST 8, 2012, FOR THE PARCELS NORTH OF ROHNERT PARK EXPRESSWAY.
- ALL TITLE REFERENCES REFER TO FIRST AMERICAN TITLE PRELIMINARY TITLE REPORT (PTR) ORDER NUMBER 0192-606957A DATED AUGUST 24, 2012, FOR THE PARCELS SOUTH OF ROHNERT PARK EXPRESSWAY.
- CITY OF ROHNERT PARK AS SUCCESSORS TO THE COUNTY OF SONOMA IN REGARDS TO KEISER AVE, PETALUMA HILL ROAD AND ROHNERT PARK EXPRESSWAY SHALL ALLOW ACCESS RIGHTS TO THE PROPERTIES SUBJECT TO THIS TENTATIVE MAP AS SHOWN AND APPROVED, THEREBY EFFECTIVELY MODIFYING THE RELINQUISHMENT OF ABUTTER RIGHTS DESCRIBED IN ITEMS 4, 6, 9, 15, 16, 22, 23, 29, AND 36 OF THE TITLE REPORTS.



Attachment 2 to Resolution

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.

**OFFSITE PUBLIC IMPROVEMENT AGREEMENT
BY AND BETWEEN THE CITY OF ROHNERT PARK
AND UNIVERSITY DISTRICT LLC AND VAST OAK PROPERTIES L.P.
FOR THE ROHNERT PARK EXPRESSWAY PHASE 2 UTILITY AND INTERSECTION
IMPROVEMENT PROJECT**

THIS OFFSITE PUBLIC IMPROVEMENT AGREEMENT (the "Agreement") is made and entered into on this ____ day of _____ 2014 (the "Effective Date") by and between UNIVERSITY DISTRICT LLC, a Delaware limited liability corporation , AND VAST OAK PROPERTIES L.P., a California limited partnership ("Developer"), and the CITY OF ROHNERT PARK, a California municipal corporation ("City"), with reference to the following facts and intentions:

R E C I T A L S

A. On April 8, 2014, the City Council of the City of Rohnert Park adopted Resolution No. 2014-035, approving the Tentative Map for the University District Vast Oak Property, prepared by MacKay & Soms and dated February 2014 (the "Tentative Map"), subject to certain conditions of approval (the "Conditions").

B. On April 22, 2014, the City Council of the City of Rohnert Park adopted its Ordinance No. 878 approving a Development Agreement with the Developer (the "Development Agreement")

C. Both the Conditions and the Development Agreement require that Improvement Plans for the first phase of development (the "first Final Map") include the construction/widening of the north side Rohnert Park Expressway between Snyder Lane and Petaluma Hill Road.

D. The Developer has submitted plans, specifications and drawings for the first phases of the required construction and widening, which were prepared by MacKay & Soms, Inc., and titled *Utility Improvement Plans, Rohnert Park Expressway, Snyder Lane to Petaluma Hill Road, Phase 1 and 2, September 2014*, 13 Sheets (Sheets 1-13; hereafter the "Phase 1 and Phase 2 Utility Improvements") and *Improvement Plans for Rohnert Park Expressway Intersection with Kerry Road/ Twin Creeks Drive/ Kells Road, September 2014*, 8 Sheets (Sheets C1-C8; hereafter the "Intersection Improvements"). Together these plans, specifications and drawings are the "Improvement Plans".

E. The Improvement Plans are on file in the office of the City Engineer and were approved by the City Engineer on the ____ day of _____ 2014.

F. The Developer wishes to begin the construction illustrated on the Improvement Plans and to complete that construction in phases.

G. Developer has requested an encroachment permit to construct the Rohnert Park Expressway Phase 2 Utility and Intersection Improvements (hereafter "Improvements"), which are more specifically depicted on the map, which is attached hereto as Exhibit 1, and located in the public right-of-way and which are a portion of the improvements required by the Conditions to be completed in advance of filing the first final map.

H. City and Developer desire to enter an agreement providing for the construction and installation of the Improvements in accordance with the plans, specification and drawings described in Recital D.

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, together with the Conditions and the requirements of Chapter 16.16 of the RPMC, are hereby incorporated into and form a material part of this Agreement

2. Purpose; Effective Date

2.1 Purpose. The purpose of this Agreement is to guarantee completion of the Improvements and ensure satisfactory performance by Developer of Developer's obligations to satisfy the Conditions.

2.2 Effective Date. The Effective Date of this Agreement shall be as set forth above.

3. Property Subject to Agreement. The property which is the subject of this Agreement is located in the City of Rohnert Park, Sonoma County, California, and is described in Exhibit 2, attached hereto and incorporated by this reference.

4. Improvements

4.1 Duty to Install Improvements. Developer will design, construct, install and complete, or cause to be constructed, installed and completed, at the Developer's sole cost and expense, the Improvements, in accordance with the Improvement Plans and to the satisfaction of the City Engineer, in his/ her reasonable discretion. Developer will also supply all labor and materials therefor, all in strict accordance with the terms and conditions of this Agreement. The construction, installation and completion of the Improvements including all labor and materials furnished in connection therewith are hereinafter referred to collectively as the "Work."

City shall not be responsible or liable for the maintenance or care of the Improvements unless and until City formally approves and accepts them in accordance with its policies and procedures. City shall exercise no control over the Improvements unless and until approved and accepted. Any use by any person of the Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Improvements. Developer shall maintain all the Improvements in a state of good repair until they are completed by Developer and approved and accepted by City. Such maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters,

sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. Prior to undertaking said maintenance work, City agrees to notify Developer in writing of the deficiencies and the actions required to be taken by the Developer to cure the deficiencies. Except in an emergency, Developer shall have thirty (30) days from the date of the notice within which to correct, remedy or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then the Developer shall have twenty-four (24) hours to correct, remedy or cure the deficiency. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Improvements or their condition prior to acceptance.

4.2. Completion Date. Developer will complete the Work within one year of the Effective Date or as required by the Amended and Restated Development Agreement between the City and Developer, whichever is sooner. All Work will be completed in a good and workmanlike manner in accordance with accepted design and construction practices. This completion date may be extended by the City in its sole and absolute discretion at the request of Developer, which request shall be accompanied by a written assurance acceptable to the City Attorney that the securities required by Section 6 shall remain enforceable throughout the term of the extension.

4.3. Estimated Cost of Work. The estimated cost of the Work is Four-hundred, Sixty-eight Thousand and Eighty Dollars (\$468,080.00). Notwithstanding this estimate, Developer hereby acknowledges and agrees that (a) the actual costs to complete the Work may significantly exceed this estimate, (b) this estimate in no way limits Developer's financial obligation, and (c) that Developer is obligated to complete the Work at its own cost, expense, and liability.

4.4. Modifications to the Plans. Approval of this Agreement by City does not release Developer of its responsibility to correct mistakes, errors, or omissions in the Improvement Plans. If, at any time, in the opinion of the City Engineer, in his/her reasonable discretion, the Improvement Plans are deemed inadequate in any respect Developer agrees to make such modifications, changes or revisions as necessary in order to complete the Work in a good and workmanlike manner in accordance with accepted design and construction standards.

4.5. Foreman or Superintendent. Developer shall give personal attention to the Work. A competent foreman or superintendent, satisfactory to the City Engineer, in his/her reasonable discretion, with authority to act for and on behalf of Developer, shall be named in writing by Developer prior to commencement of the Work, shall be present on the Property during the performance of the Work, and may not be changed without the advance notification to and satisfaction and concurrence of the City Engineer.

4.6. Encroachment Permits. Developer shall obtain, at its sole cost and expense, any encroachment permits required by the City in order to perform the Work.

4.7. Commencement of Construction and Inspection. Developer and its contractor or subcontractors shall not commence construction of the Improvements until Developer has received written authorization from City to proceed. Written authorization shall be in the form of signed approved plans along with permit issuance, including any encroachment permit required to carry on construction activities in the City's right-of-way as described in Section 4.6. All work

performed on the Improvements shall be done in strict compliance with the City approved plans, specifications and the contract documents and in a good and workmanlike manner. All work performed by Developer, its contractor or agents to construct the Improvements shall be subject to inspection and approval by City. All fees and costs to construct the Improvements shall be borne solely by Developer (including the applicable Inspection Fee in accordance with the City's adopted Engineering Fee Schedule). Inspection by City or its employees or agents shall not relieve Developer of its liability for design defects or improper or inadequate workmanship.

4.8. Examination of Work. All of the Work shall be performed to the satisfaction of the City Engineer, in his/her reasonable discretion. The City and its authorized agents shall, at all times during the performance of the Work, have free access to the Work and shall be allowed to examine the Work and all materials used and to be used in the Work.

4.9. City's Inspection, Administration and Testing Costs. Developer shall pay to City the actual cost for all inspection, administration and testing services furnished by City in connection with this Agreement, including those performed by consultants under contract with the City (the "City Costs"). City agrees not to double charge Developer (through the imposition of both a processing fee and a consultant charge) for any individual monitoring, inspection, testing or evaluation service. In addition, City agrees to limit its use of outside consultants to those reasonably necessary or desirable, as determined by the City Manager or his designee in his reasonable discretion, to accomplish the requisite inspection, administration and monitoring. The estimated cost for the inspection, administration and testing services is Seven Thousand, Twenty-one Dollars and 20 cents (\$7,021.20) (the "Estimated Cost"). Concurrently with the execution of this Agreement, Developer shall deposit an amount equal to the Estimated Cost with City for the payment of the City Costs. Notwithstanding this estimate, Developer hereby acknowledges and agrees that (a) the actual costs to accomplish the requisite inspection, administration and monitoring may significantly exceed this estimate, (b) this estimate in no way limits Developer's financial obligation, and (c) that Developer is obligated to reimburse the City for its actual cost, expense, and liability associated with said inspection, administration and monitoring. In the event that the Estimated Cost is insufficient to cover the actual City Costs incurred, Developer shall, upon notice in writing by the City Engineer, deposit such additional amount as may be required to pay the City Costs. Any amount of the Estimated Cost, initial deposit or additional amounts deposited remaining after payment of all City Costs will be returned to Developer. City may, at its discretion, deposit such funds in an interest-bearing account and retain any and all interest earned.

4.10 No Waiver by City. Inspecting of the work and/or materials, or approval of work and/or materials, or a statement by an officer, agent or employee of the City indicating the work complies with this Agreement, or acceptance of all or any portion of the work and/or materials, or payments thereof, or any combination of all of these acts shall not relieve Developer or its obligation to fulfill this Agreement; nor is the City by these acts prohibited from bringing an action for damages arising from the failure to comply with this Agreement.

4.11. Erosion Control. Pursuant to Rohnert Park Municipal Code Chapter 15.52, Developer shall be responsible for the control of erosion on the Property and shall prevent its entry into the storm drainage system.

4.12 Prevailing Wages. The work of the Improvements constitutes a "public work" as defined in the California Labor Code, section 1771, *et seq* ("Labor Code Regulations"). Developer agrees and acknowledges that the construction of the Improvements is subject to the payment of prevailing wages and agrees to comply with the requirements of the Labor Code Regulations. Further, Developer agrees to defend, indemnify and hold City, its elected officials,

officers, employees, and agents free and harmless from any and all claims, damages, suits or actions arising out of or incident to Developer's obligations under this section. Developer agrees to satisfy, to the extent applicable, its obligation of registering with the Department of Industrial Relations and furnishing electronic certified payroll records to the Labor Commissioner pursuant to Senate Bill 854 (2014).

4.13. Contractor Licenses. All work performed on the Improvements shall be done only by contractors licensed in the State of California and qualified to perform the type of work required and comply with the City's Business License Ordinance.

4.14. Repair of Work Damaged During Construction. Developer agrees to repair or have repaired in a timely manner at its sole cost and expense all public roads, streets, or other public or private property (both real and personal) damaged as a result of or incidental to the Work or in connection with the development of the Property or to pay to the property owner of any damaged road, street or property the full cost of such repair. In addition, Developer shall obtain the written acceptance of such repair or payment from any owner whose private property was repaired by Developer or to whom Developer has paid the full cost of such repair in accordance with this Section 4.14. City shall be under no obligation whatsoever to accept the Work completed under this Agreement until such time as all repairs have been completed or have been paid for and written acceptances have been provided to the City Engineer, except as otherwise provided in section 4.18.1

4.15. Payments. Developer agrees that it will pay, when due, all those furnishing labor or materials in connection with the Work. Developer further agrees that pursuant to Government Code section 66499.7, the Labor and Materials Bond provided by Developer in accordance with Section 6.1.2 of this Agreement shall not be released if any mechanics liens or stop notices are outstanding, unless said liens are released by bond in compliance with Civil Code section 3143.

4.16. Liability for Work Prior to Formal Acceptance. Until the City Council has formally accepted the Improvements, Developer shall be solely responsible for all damage to the work, regardless of cause, and for all damages or injuries to any person or property at the work site, except damage or injury due to the sole negligence of City, or its employees. Developer shall replace or repair any portion of the Improvements that have been destroyed or damaged prior to final acceptance of completed work by the City Council or the City Engineer. Any such repair or replacement shall be to the satisfaction and subject to the approval of the City Engineer. Developer shall repair to the satisfaction of the City Engineer any damage to the utilities systems, concrete work, street paving or other public improvements that may occur in connection with the Improvements work.

4.17. Completion of Work. After Developer (a) completes the Work in accordance with the Improvement Plans and the terms and conditions of this Agreement, (b) repairs any road, street, or private or public property damaged as a result of the Work or pays the full cost of such repair to the owner whose property was damaged and (c) obtains the written acceptance of such repair or payment from any owner whose private property was repaired by Developer or to whom Developer paid the full cost of such repair, Developer will provide City with a written notice of completion, together with copies of all written acceptances.

4.18. Final Acceptance.

4.18.1 Notice of Completion. Within thirty (30) days of receipt of Developer's written notification pursuant to Section 4.17 above, City Engineer shall inspect the Work and repairs

and review the written acceptances, if any, and send Developer a written notice stating whether the Work and repair are complete to the satisfaction of the City Engineer, in his/her reasonable discretion, and whether the written acceptances have been provided. If the Work and repair are, in the opinion of the City Engineer, not complete and satisfactory, and/or written acceptances have not been provided, the City Engineer will list the deficiencies that must be corrected to find the Work and repair complete and satisfactory. Upon satisfactory completion of the Work and repair and submittal of written acceptances, the City Engineer will send Developer a written notice of satisfactory completion. The requirement for written acceptances may be waived by the City Engineer, in his/her reasonable discretion, if Developer has made commercially reasonable efforts to obtain such acceptances. City Engineer's failure to respond to Developer's written notification within thirty (30) days will not be deemed a breach or default under this Agreement.

4.18.2 Acceptance of Improvements. After sending Developer a written notice of satisfactory completion pursuant to Section 4.18.1, the City Engineer will recommend acceptance of the Improvements, or a portion thereof, to the City Council. In conjunction with such recommendation, the City Engineer will recommend the acceptance of the offers of dedication shown on the final map for the Property. The acceptance of the Improvements, offers of dedication and right-of-way and easements, if any, shall be by resolution. Upon adoption of such resolution, the City Engineer shall record a notice of acceptance, in a form to be approved by the City Attorney, in the Official Records of Sonoma County.

4.19. Warranty Period; Repair and Reconstruction. Without limiting the foregoing, Developer expressly warrants and guarantees all Work performed under this Agreement and all materials used in the Work for a period of one (1) year after the date of recordation of the notice of acceptance of the improvements in accordance with Section 4.18. If, within this one (1) year period, any Improvement or part of any Improvement installed or constructed, or caused to be installed or constructed by Developer, or any of the work done under this Agreement, fails to fulfill any of the requirements of the Improvement Plans or this Agreement, Developer shall, without delay and without cost to City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Work or Improvement to the satisfaction of the City Engineer. Should Developer fail to act promptly, by failing to repair, replace or reconstruct work thirty (30) days after notification by City, or in accordance with this requirement, or should the exigencies of the situation require repairs, replacements or reconstruction to be made before Developer can be notified, City may, at its option, make the necessary repairs, replacements or perform the necessary reconstruction and Developer shall pay to the City upon demand the actual cost of such repairs, replacements or reconstruction.

4.20. Record Drawings. Upon completion of the Improvements and prior to final acceptance by the City Council, Developer shall deliver to City one electronic file, in a format specified by the City Engineer, and one mylar copy of "as-built" drawings. These drawings shall be in a form acceptable to the City Engineer, shall be certified by an engineer licensed by the State of California as to accuracy and completeness, and shall reflect the Improvements as actually constructed, with any and all changes incorporated therein. Developer shall be solely responsible and liable for ensuring the completeness and accuracy of the record drawings.

4.21. Ownership of Improvements. From and after acceptance of the Improvements by formal action of the City Council, ownership of the Improvements shall be vested exclusively in City.

5. Community Facilities District; Intent to Reimburse. City and Developer acknowledge that each is working with the California Statewide Communities Development

Authority to form a Community Facilities District to fund the construction of some of the infrastructure required by the Amended and Restated Development Agreement between Developer and City. City and Developer acknowledge that the Improvements are in the category of infrastructure that is potentially eligible for funding through a Community Facilities District and that Developer's costs may be reimbursed with the proceeds of Community Facilities District bonds at some future date.

6. Security.

6.1 Performance, Labor and Materials and Warranty Security. In accordance with Sections 16.16.060 through 16.16.070 of the Rohnert Park Municipal Code, Developer will furnish and deliver to City, within the times set forth below, the following surety bonds, each of which must be issued by a surety company duly and regularly authorized to do general surety business in the State of California, or an irrevocable assignment of funds or letter of credit as may be acceptable to the City Attorney.

6.1.1 Performance Security. Developer shall furnish and deliver performance security in the amount of Four-hundred, Sixty-eight Thousand and Eighty Dollars (\$468,080.00), concurrently with the execution of this Agreement, which must meet the requirements of Government Code Section 66499.1, if applicable, and Rohnert Park Municipal Code Section 16.16.070 and be acceptable to the City Attorney. The security shall be conditioned upon the faithful performance of this Agreement with respect to the Work and shall be released by the City effective upon the date of recordation of the notice of acceptance of the improvements as described in Section 4.18.2 and Developer's delivery of the Warranty Security described in Section 6.1.3.

6.1.2 Labor and Materials Security. Developer shall furnish and deliver labor and materials security in the amount of Four-hundred, Sixty-eight Thousand and Eighty Dollars (\$468,080.00), concurrently with the execution of this Agreement which security must meet the requirements of Government Code Section 66499.2, if applicable, and Rohnert Park Municipal Code Section 16.16.070 and be acceptable to the City Attorney. The security shall secure payment to the contractor(s) and subcontractor(s) performing the Work and to all persons furnishing labor, materials or equipment to them. The City shall retain each security until both (i) the City accepts the Work in accordance with Section 4.18 above and (ii) the statute of limitations to file an action under Civil Code section 3114 *et seq.* has expired. After said date, the security may be reduced by the City Engineer to an amount not less than the total amount claimed by all claimants for whom claims of lien have been recorded and notice given in writing to the City Council. The balance of the security shall be retained until the final settlement of all such claims and obligations. If no such claims have been recorded, the security shall be released in full by the City Engineer.

6.1.3. Warranty Security. Developer shall furnish and deliver warranty security in the amount specified in section 16.16.070 c. of the Rohnert Park Municipal Code. The amount of Seventy Thousand, Two Hundred and Twelve Dollars (\$70, 212.00) shall be provided upon acceptance of the Improvements and prior to release of the Performance Security. The security shall be in a form acceptable to the City Attorney and shall guarantee and warranty the Work for a period of one (1) year following the date of recordation of the notice of acceptance of the improvements against any defective work or labor done, or defective materials furnished.

6.2. Additional Security. If either upon execution of this Agreement or during the course of performance the City considers that it is necessary to have Developer post additional security, the City may require either a cash deposit or a surety bond guaranteeing performance in a form and signed by sureties satisfactory to it. The condition of the security shall be that if Developer fails to

perform its obligation under this Agreement, the City may in the case of a cash bond act for it using the proceeds or in the case of a surety bond require the sureties to perform the obligations of the Agreement.

7 Indemnity and Insurance.

7.1 Indemnification. Developer agrees to indemnify, defend and hold the City, its elective and appointed boards, commissions, officers, agents, employees and consultants, harmless from and against any and all claims, liabilities, losses, damages or injuries of any kind (collectively, "Claims") arising out of Developer's, or Developer's contractors', subcontractors', agents' or employees', acts, omissions, or operations under this Agreement, including, but not limited to, the performance of the Work, whether such acts, omissions, or operations are by Developer or any of Developer's contractors, subcontractors, agents or employees, except to the extent such Claims are caused by the sole negligence or willful misconduct of the City. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. Developer shall defend the City as required by California Civil Code Section 2778, and with counsel reasonably acceptable to the City developer shall have no right to seek reimbursement from City for the costs of defense.

The aforementioned indemnity shall apply regardless of whether or not City has prepared, supplied or approved plans and/or specifications for the Work or Improvements and regardless of whether any insurance, workers compensation, disability or other employee benefit acts or terms required under this Agreement are applicable to any Claims. The City does not and shall not waive any of its rights under this indemnity provision because of its acceptance of the bonds or insurance required under the provisions of this Agreement. Developer's obligation to indemnify City shall survive the expiration or termination of this Agreement.

Developer agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-contractor or any other person or entity involved by, for, with or on behalf of Developer in the performance of this Agreement. In the event Developer fails to obtain such indemnity obligations from others as required here, Developer agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

7.2. Insurance. Developer shall maintain Commercial General Liability Insurance protecting the City from incidents as to bodily injury liability and property damage liability that may occur as a result of the Work and additional repairs. Developer shall provide certificate(s) of insurance and endorsements to City before any Work commences. The insurance policy shall, at a minimum, contain, or be endorsed to contain, the following provisions:

- (1) The City, its officers, elected officials, employees, consultants, agents and volunteers are to be covered as additional insured's as respects to liability arising out of activities performed by or on behalf of Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, elected officials, employees, consultants, agents and volunteers.
- (2) The amounts of public liability and property damage coverage shall not be less than \$3,000,000 (Three Million Dollars) per occurrence for bodily injury, personal injury and property damage.

- (3) The insurance shall be maintained in full force until the work has been completed to the satisfaction of the City Engineer.
- (4) The insurance policy shall provide for 30 days' notice of cancellation to the City. The policy shall not be cancelled earlier than nor the amount of coverage be reduced earlier than thirty (30) days after the City receives notice from the insurer of the intent of cancellation or reduction.
- (5) Any failure to comply with the reporting provisions of the policy shall not affect the coverage provided to the City, its officers, elected officials, employees, consultants, agents and volunteers.
- (6) Developer's insurance coverage shall be primary insurance as respects the City, its officers, elected officials, employees, consultants, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, elected officials, employees, consultants, agents and volunteers shall be in excess of Developer's insurance and shall not contribute to it.
- (7) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.
- (8) Developer and Developer's insurance company agree to waive all rights of subrogation against City, its officers, elected officials, employees, agents and volunteers for losses paid under Developer's workers' compensation insurance policy which arise from the work performed by Developer.
- (9) Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, and include a "separation of insureds" or "severability" clause which treats each insured separately, except with respect to the limits of the insurer's liability (cross-liability endorsement).
- (10) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverages requirements and/or limits shall be available to the Additional Insured, including but not limited to any umbrella or excess insurance. Furthermore, the requirements for coverage and limits shall be the greater of: (a) the minimum coverage and limits specified in this Agreement; or (b) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

In the event that Developer's insurance is cancelled, Developer shall provide replacement coverage or all work must cease as of the cancellation date until replacement insurance coverage is provided.

If Developer fails to maintain insurance coverage or provided insurance documentation which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. City, at its sole option, may terminate this Agreement and obtain damages from Developer resulting from said

breach. Alternatively, City may purchase the required insurance coverage, and without further notice to Developer, may deduct from sums due to Developer any premium costs advanced by City for such insurance. These remedies shall be in addition to any other remedies available to City.

7.3. Workers' Compensation Insurance. Developer shall provide, or cause to be provided, Workers' Compensation insurance as required by law, and shall cause its contractors and their subcontractors, agents and representatives to also maintain Workers' Compensation insurance as required by law. No Work shall commence until such Workers' Compensation insurance is obtained and in full force and effect.

7.4. Other Insurance Requirements. Developer shall:

- (1) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance which shall clearly evidence all insurance required in this section and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on thirty (30) days prior written notice to City.
- (2) Provide to City certified copies of endorsements and policies if requested by City, and properly executed certificates of insurance evidencing the insurance required herein.
- (3) Replace or require the replacement of certificates, policies and endorsements for any insurance required herein expiring prior to completion and acceptance of the Improvements.
- (4) Maintain all insurance required herein from the time of execution of this Agreement until the acceptance of the Improvements.
- (5) Place all insurance required herein with insurers licensed to do business in California.

8. Breach of Agreement; Opportunity to Cure; Remedies.

8.1. 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 the Work within the time set forth herein or abandons the Work.
- (2) Developer assigns the Agreement without the prior written consent of City.
- (3) 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.
- (4) Developer or Developer's contractors, subcontractors, agents or employees, fail to comply with any terms or conditions of this Agreement.
- (5) Any delay in the construction of any portion of the Work or repairs, which in the reasonable opinion of the City Engineer, endangers public or private property.

The City may serve written notice of breach and default upon Developer and the financial institution holding the security.

8.2. Breach of Agreement; Performance by City. If the City gives Developer notice, under Section 8.1, of breach and default of this Agreement, the City may proceed to complete the Work by contract or other method the City considers advisable, at the sole expense of Developer. Developer, immediately upon demand, shall pay the costs and charges related to the Work and any subsequent repairs. City, without liability for doing so, may take possession of and utilize in completing the Work and repairs, if any, such materials and other property belonging to Developer as may be on or about the Property and necessary for completion of the work. In the event of default, the financial institution holding the security shall be liable to City to pay the face amount of the bonds, as specified under Section 6.

8.3. Remedies. City may bring legal action to compel performance of this Agreement and recover the costs of completing the Work and/or repairs, if any, including City's administrative and legal costs. Developer agrees that if legal action is brought by City under this section of the Agreement, Developer shall pay all of the costs of suit; reasonable attorney fees, arbitration costs and such other costs as may be determined by the court or arbitrator. 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.

9. Miscellaneous.

9.1 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.

9.2. 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: Mr. Craig R. Harrington

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.

9.3 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.

9.4 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.

9.5 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.

9.6 Transfers; Assignments. Developer may assign its obligations under this Agreement to successor owner(s) of the Site 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.

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

9.8 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.

9.9 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.

9.10 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.

9.11. 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 9.6, in which event this Agreement shall remain binding upon Developer.

9.12. 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.

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

10.15. 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.

10.16. 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.

10.17. 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.

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

"CITY"

CITY OF ROHNERT PARK, a California
municipal corporation

Dated: _____

By: _____
City Manager

Per Resolution No. 20____-____ adopted by the Rohnert Park
City Council at its meeting of _____ (date)_____.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Dated: _____

"DEVELOPER"
University District LLC,

By: _____
Kevin Pohlson,
Vice President

By: _____
Dave Luebkehan,
Chief Financial Officer

Vast Oak Properties L.P.

By: _____
Craig R. Harrington
General Partner

ACKNOWLEDGMENT

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

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)

[illegible]

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

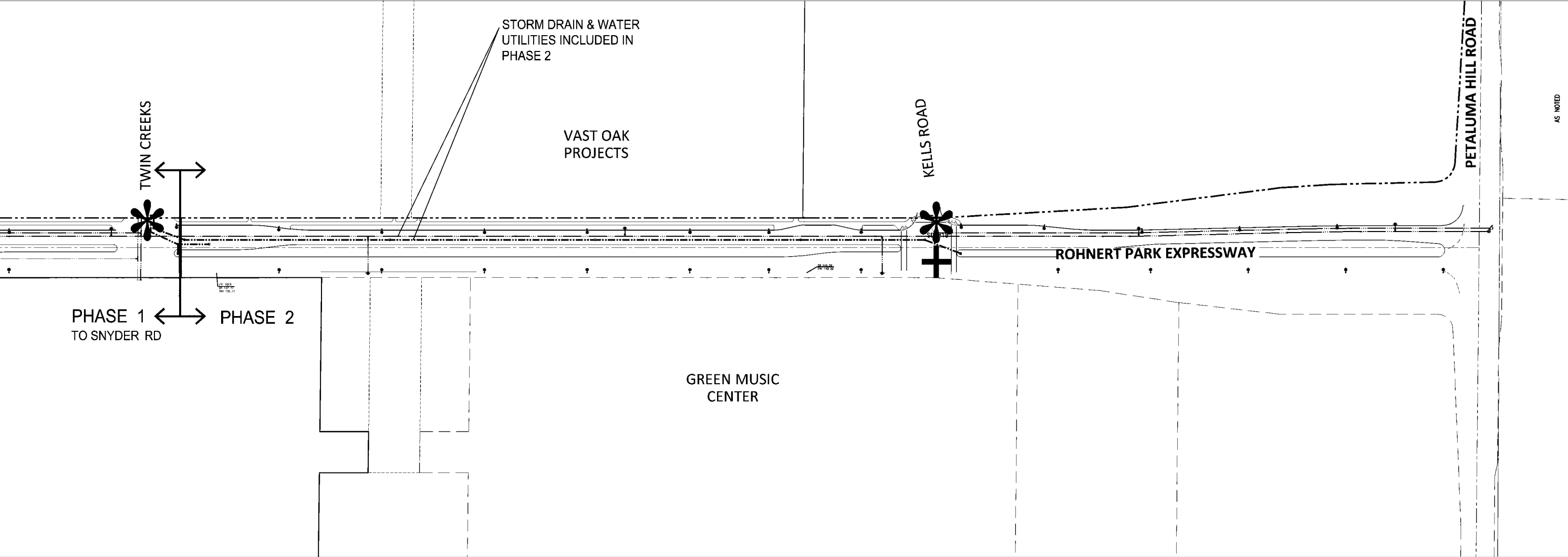
personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on 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.

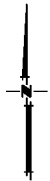
WITNESS my hand and official seal.

Signature _____
(Seal)

Agreement
Exhibit 1
Phase 2



LEGEND



NTS



PARTIAL INTERSECTION IMPROVEMENTS INCLUDED WITHIN PHASE 1



FULL INTERSECTION IMPROVEMENTS INCLUDED WITHIN PHASE 2

NOTE: KELLS ROAD INTERSECTION INITIAL IMPROVEMENTS TO BE COMPLETED IN PHASE 1. REMAINING IMPROVEMENTS TO BE COMPLETED DURING PHASE 2.

Agreement
Exhibit 2
Property Covered by Agreement



①	APN #	OWNER
①	158-220-001	SULLIVAN DAVID M & ERINDERA TR
②	158-220-002	LALAS LEILA B & LALAS HERMIE
③	158-220-003	PIPPON BARRY W
④	158-220-004	KING PAULETTE
⑤	158-220-005	NAVARRETE FRANCISCO V & JOSEFINA C
⑥	158-220-006	LOCHMAN KATHLEEN ELIZABETH TR
⑦	158-220-007	TIETZ RONALD GEORGE & NANCY LEE
⑧	158-220-008	WALLACE JILLIAN A & WALLACE CHRISTOPHER J
⑨	158-220-009	CRYER STEVEN R & GERHARDT LESLIE E
⑩	158-220-010	LALAS LEILA B & HERMIE W
⑪	158-220-011	ROBERTS PHILLIP P
⑫	158-220-012	BARTLETT HELENE G TR
⑬	158-220-013	MAC KENZIE IAN & MAC KENZIE JILL
⑭	158-220-014	MILLER ROBERT E & SMITH-MILLER PAMELA K
⑮	158-220-015	MCLEAN KENNETH B & JULIE L
⑯	158-220-016	MCCORMACK NATEE M & DENNIS G
⑰	158-220-074	CITY OF ROHNERT PARK
⑱	158-220-075	CITY OF ROHNERT PARK

NOTES

- ALL TITLE REFERENCES REFER TO FIRST AMERICAN TITLE PRELIMINARY TITLE REPORT (PTR) ORDER NUMBER 4910-606957 DATED AUGUST 8, 2012, FOR THE PARCELS NORTH OF ROHNERT PARK EXPRESSWAY.
- ALL TITLE REFERENCES REFER TO FIRST AMERICAN TITLE PRELIMINARY TITLE REPORT (PTR) ORDER NUMBER 0192-606957A DATED AUGUST 24, 2012, FOR THE PARCELS SOUTH OF ROHNERT PARK EXPRESSWAY.
- CITY OF ROHNERT PARK AS SUCCESSORS TO THE COUNTY OF SONOMA IN REGARDS TO KEISER AVE, PETALUMA HILL ROAD AND ROHNERT PARK EXPRESSWAY SHALL ALLOW ACCESS RIGHTS TO THE PROPERTIES SUBJECT TO THIS TENTATIVE MAP AS SHOWN AND APPROVED, THEREBY EFFECTIVELY MODIFYING THE RELINQUISHMENT OF ABUTTER RIGHTS DESCRIBED IN ITEMS 4, 6, 9, 15, 16, 22, 23, 29, AND 36 OF THE TITLE REPORTS.

