

## **RESOLUTION NO. 2014-160**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY (THE "AUTHORITY") TO FORM A COMMUNITY FACILITIES DISTRICT WITHIN THE TERRITORIAL LIMITS OF THE CITY OF ROHNERT PARK AND RELATED MATTERS**

**WHEREAS**, the City of Rohnert Park (the "City") is a municipal corporation duly organized and existing under and by virtue of the laws of the State of California (the "State"); and

**WHEREAS**, the California Statewide Communities Development Authority (the "Authority") is a California joint-exercise of powers authority lawfully formed and operating within the State pursuant to an agreement (the "Joint Powers Agreement") entered into as of June 1, 1988 under the authority of Title 1, Division 7, Chapter 5 (commencing with Section 6500) of the California Government Code; and

**WHEREAS**, the City is a party to the Joint Powers Agreement and by virtue thereof a member (a "Program Participant") of the Authority; and

**WHEREAS**, the Joint Powers Agreement was entered into to establish the Authority as an agency authorized to issue bonds to finance projects within the territorial limits of its Program Participants; and

**WHEREAS**, the Joint Powers Agreement authorizes the Authority to undertake financing programs under any applicable provisions of State law to promote economic development, the stimulation of economic activity, and the increase of the tax base within the jurisdictional boundaries of its Program Participants; and

**WHEREAS**, the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5 (beginning with Section 53311) of the Government Code of the State (the "Act") is an applicable provision of State law available to, among other things, finance public improvements necessary to meet increased demands placed upon local agencies as a result of development; and

**WHEREAS**, there is a development project in the City owned by Vast Oak Properties L.P., a California limited partnership, and University District LLC, a Delaware limited liability company (respectively, the "Development Project" and the "Developer"); and

**WHEREAS**, the City and the Developer have entered into an Amended and Restated Development Agreement dated April 22, 2014, which, among other things, allows Developer at its sole discretion to elect to form a community facilities district through the Authority so long as the Authority establishes the community facilities district in accordance with the City's goals and policies as set forth in its Resolution 2006-076 (attached as Exhibit A)

and such that its terms are in compliance with Section 4.04 of the Amended and Restated Development Agreement (attached as Exhibit B); and

**WHEREAS**, the Developer has exercised its sole discretion and wishes to form the community facilities through the Authority and City respects this discretion, as outlined in the Amended and Restated Development Agreement; and

**WHEREAS**, the Development Project will promote economic development, the stimulation of economic activity, and the increase of the tax base within the City; and

**WHEREAS**, both the Authority and the City are "local agencies" under the Act; and

**WHEREAS**, the Act permits two or more local agencies to enter into a joint community facilities agreement to exercise any power authorized by the Act; and

**WHEREAS**, entering into such an agreement with the Authority to authorize the Authority to form a community facilities district within the territorial limits of the City to finance public improvements and fees required of the Development Project is consistent with the City's commitments in the Amended and Restated Development Agreement; and

**WHEREAS**, a form of Funding, Acquisition, Improvement and Public Facilities Fee Credit Agreement (the "Acquisition Agreement") between the City, the Authority and the Developer has been presented to the City Council, as Exhibit C, and is on file with the City Clerk; and

**WHEREAS**, nothing herein constitutes the City's approval of any applications, Development Project entitlements and/or permits, and such, to the extent required in the future, are subject to and contingent upon City Council approval following, to the extent applicable, environmental review in compliance with the California Environmental Quality Act ("CEQA"); and

**WHEREAS**, nothing herein affects, without limitation, requirements for and/or compliance with any and all applicable and/or necessary improvement standards, land use requirements or subdivision requirements relating to the Development Project or any portion thereof, which obligations are and shall remain independent and subsisting; and

**WHEREAS**, the City Council is fully advised in this matter;

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Rohnert Park that it does hereby find, determine, declare and resolve as follows:

Section 1. The City hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to municipal affairs of the City and the statements, findings and determinations of the City set forth in the recitals above and in the preambles of the documents approved herein are true and correct and material to the adoption of this resolution.

Section 2. This resolution shall constitute full "local approval," under Section 9 of the Joint Powers Agreement, for the Authority to undertake and conduct proceedings in accordance herewith and under the Act to form a community facilities district (the "Community Facilities District") with boundaries substantially as shown on Exhibit D, attached hereto and incorporated by this reference, and to authorize a special tax and to issue bonds with respect thereto.

Section 3. The Joint Powers Agreement, together with the terms and provisions of this resolution, shall together constitute a joint community facilities agreement between the City and the Authority under the Act, as, without this resolution, the Authority has no power to conduct proceedings under the Act to form the Community Facilities District. Adoption by the Commission of the Authority of the Resolution of Intention to form the Community Facilities under the Act shall constitute acceptance of the terms hereof by the Authority.

Section 4. This resolution and the agreement it embodies are determined to be beneficial to the residents of the City, and of the future residents of the area within the Community Facilities District.

Section 5. The City has adopted Local Goals and Policies as required by Section 53312.7 of the Act. The Amended and Restated Development Agreement requires the use of the City's Local Goals and Policies, as outlined in Resolution 2006-276 and attached as Exhibit A, in connection with the formation and administration of any Community Facilities District. The City hereby agrees that the Authority may act in lieu of the City under those Local Goals and Policies in forming and administering the Community Facilities District. The City also agrees that in lieu of the letter of credit described under Section 2 of the Local Goals and Policies, and unless specifically modified by Council Resolution, for the first bond issue, the Authority will require:

- A value to lien (VTL) ratio of not less than 5:1 on undeveloped property
- At least 2 years of capitalized interest
- A reserve fund equivalent to the Internal Revenue Code maximum

For any subsequent bond issues, the City Manager and staff from the Authority may agree upon alternative bond security measures provided that in no case shall bond security be less than is required by the Act.

The Authority also agrees that with respect to all matters other than the letter of credit described under Section 2 of the Local Goals and Policies, that it will comply strictly with the City's Local Goals and Policies as outlined in Resolution 2006-276 in forming and administering the Community Facilities District and in the issuance of bonds and that no waiver or exception to any of those Local Goals and Policies will be approved without prior written consent of the City.

Section 6. Pursuant to the Act and this resolution, the Authority may conduct proceedings under the Act to form the Community Facilities District and to have it authorize the financing of the facilities and fees set forth on Exhibit E, attached hereto and incorporated by this reference, with first priority given to retiring the lien established by the City's Assessment District 2005-01. All of the facilities whether to be financed directly or through fees are facilities that have an

expected useful life of five years or longer and are facilities that the City is authorized by law to construct, own or operate or to which they may contribute revenue. The facilities are referred to herein as the "Improvements" and the Improvements to be owned by the City are referred to as the "City Improvements". The fees are referred to as the "Fees" and the Fees paid or to be paid to the City are referred to as the "City Fees".

Section 7. The City Council certifies to the Commission of the Authority that all of the City Improvements including the improvements to be constructed or acquired with the proceeds of City Fees are necessary to meet increased demands placed upon the City of Rohnert Park as a result of development occurring or expected to occur within the Community Facilities District.

Section 8. The Authority will apply the special tax collections initially as required by the documents under which any bonds are issued; and thereafter to the extent not provided in the bond documents, may pay its own reasonable administrative costs incurred in the administration of the Communities Facility District. The Authority will remit any special revenues remaining after the final retirement of all bonds to the City. The City will apply such special revenues it receives for authorized City Improvements or City Fees and its own administrative costs only as permitted by the Act. The City and the Authority acknowledge that nothing in this Resolution prevents the City from recovering its costs associated with supporting the formation of the community facilities district and/or the review, permitting, inspection, acquisition audit and acquisition of City Improvements and/or the administration of the City's fee programs through means other than the collection of special taxes.

Section 9. The Authority will administer the Community Facilities District, including employing and paying all consultants; annually levying the special tax and all aspects of paying and administering the bonds, and complying with all State and Federal requirements appertaining to the proceedings including the requirements of the United States Internal Revenue Code. The City will cooperate in a commercially reasonable manner with the Authority in respect to the requirements of the Internal Revenue Code as related to the City Improvements and City Fees, and to the extent information is required of the City to enable the Authority to perform its disclosure and continuing disclosure obligations with respect to the bonds, although the City will not participate in nor be considered to be a participant in the proceedings respecting the Community Facilities District (other than as a party to the agreement embodied by this Resolution) nor will the City be or be considered to be an issuer of the bonds.

Section 10. In the event the Authority completes issuance and sale of bonds, and bond proceeds are available to finance the Improvements, the Authority shall establish and maintain a fund to be known as the "City of Rohnert Park University Park Community Facilities District Acquisition and Construction Fund" (the "Acquisition and Construction Fund"). The portion of the bond proceeds which is intended to be utilized to finance the Improvements and Fees shall be deposited in the Acquisition and Construction Fund. The Acquisition and Construction Fund will be available both for the City Improvements and City Fees. As described in Section 6, first priority for bond proceeds deposited in the Acquisition and Construction Fund will be retiring the lien established by the City's Assessment District 2005-01.

Section 11. As respects the Authority, the City agrees to fully administer, and to take full governmental responsibility for the acquisition of the City Improvements and for the administration and expenditure of the City Fees including but not limited to environmental review, approval of plans and specifications, bid requirements, performance and payment bond requirements, insurance requirements, contract and construction administration, staking, inspection, acquisition of necessary property interests in real or personal property, the holding back and administration of retention payments, punch list administration, and the Authority shall have no responsibility in that regard. The City reserves the right, as respects the Developer, to require the Developer to contract with the City to assume any portion or all of this responsibility. As described in Section 8, the City reserves the right to collect its reasonable costs for all activities, including consultant costs and administrative costs, through means available to it including but not limited to those described in the Amended and Restated Development Agreement.

Section 12. The City agrees to indemnify and to hold the Authority, its other members and its other members' officers, agents and employees, and the other local agencies, and their offices, agencies and employees (collectively the "Indemnified Parties") harmless from any and all claims, suits and damages (including costs and reasonable attorney's fees) arising out of the design, engineering, construction and installation of the City Improvements and the improvements to be financed or acquired with City Fees. The City reserves the right, as respects the Developer, to require the Developer to assume by contract with the City any portion or all of this responsibility. Consistent with the requirements of Section 4.04 of the Amended and Restated Development Agreement, Developer is obligated to and has agreed to assume all of this responsibility pursuant to the concurrent execution of the Acquisition Agreement, which is more specifically described in Paragraph 15.

Section 13. As respects the Authority, the City agrees that - once it determines that the City Improvements are constructed according to the approved plans and specifications, and the City and the Developer have put in place their agreed upon arrangements for the funding of maintenance of the City Improvements - City will accept ownership of the City Improvements, take maintenance responsibility for the City Improvements and indemnify and hold harmless the Indemnified Parties to the extent provided in the preceding paragraph from any and all claims etc., arising out of the use and maintenance of the City Improvements. The City reserves the right, as respects the Developer, to require the Developer by contract with the City to assume any portion or all of this responsibility. Consistent with the requirements of Section 4.04 of the Amended and Restated Development Agreement, Developer is obligated to and has agreed to assume all of this responsibility pursuant to the concurrent execution of the Acquisition Agreement, which is more specifically described in Paragraph 15.

Section 14. The City acknowledges the requirement of the Act that if the City Improvements are not completed prior to the adoption, by the Authority Commission, of the Resolution of Formation of the Community Facilities District, the City Improvements must be constructed as if they had been constructed under the direction and supervision, or under the authority of, the City. The City acknowledges that this means all City Improvements must be constructed under contracts that require the payment of prevailing wages as required by Section 1720 and following of the Labor Code of the State of California. The Authority makes no representation that this requirement is the only applicable legal requirement in this regard. The City reserves the right, as respects the Developer to assign appropriate responsibility for

compliance with this paragraph to the Developer. Consistent with the requirements of Section 4.04 of the Amended and Restated Development Agreement, Developer is obligated to and has agreed to assume all of this responsibility pursuant to the concurrent execution of the Acquisition Agreement, which is more specifically described in Paragraph 15.

Section 15. The form of the Acquisition Agreement, attached as Exhibit C and incorporated by this reference, is hereby approved, and the City Manager or such officer's designee (the "City Manager") is authorized to execute, and deliver to the Developer and the Authority, the Acquisition Agreement on behalf of the City in substantially similar form, with such changes as shall be approved by the City Manager after consultation with the City Attorney and the Authority's bond counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 16. After completion of the City Improvements and appropriate arrangements for the maintenance of the City Improvements, or any discrete portion thereof as provided in Section 53313.51 of the Act and in the Acquisition Agreement, to the satisfaction of the City, and in conjunction with the City's acceptance thereof, acquisition of the City Improvements shall be undertaken as provided in the Acquisition Agreement.

Section 17. The City hereby consents to the formation of the Community Facilities District in accordance with this Resolution and consents to the assumption of jurisdiction by the Authority for the proceedings respecting the Community Facilities District with the understanding that the Authority will hereafter take each and every step required for or suitable for consummation of the proceedings, the levy, collection and enforcement of the special tax, and the issuance, sale, delivery and administration of the bonds, all at no cost to the City and without binding or obligating the City's general fund or taxing authority.

Section 18. The terms of the Agreement embodied by this Resolution may be amended by a writing duly authorized, executed and delivered by the City and the Authority, except that no amendment may be made after the issuance of the bonds by the Authority that would be detrimental to the interests of the bondholders without complying with all of the bondholder consent provisions for the amendment of the bond resolutions, bond indentures or like instruments governing the issuance, delivery and administration of all outstanding bonds.

Section 19. Except to the extent of the City's agreement to take responsibility for the ownership of the City Improvements, no person or entity, including the Developer shall be deemed to be a third party beneficiary of this Resolution, and nothing in this resolution (either express or implied) is intended to confer upon any person or entity other than the Authority and the City (and their respective successors and assigns) any rights, remedies, obligations or liabilities under or by reason of this Resolution.

Section 20. This Resolution shall remain in force until all bonds have been retired and the authority to levy the special tax conferred by the Community Facilities District proceedings has ended or is otherwise terminated.

Section 21. The City Council hereby authorizes and directs the City Manager and other appropriate City staff to cooperate with the Authority and its consultants and to do all things

reasonably necessary and appropriate to carry out the intent of this Resolution and the Community Facilities District financing, to execute any and all certificates and documents in connection with the bond issuance and to execute any and all Acquisition Agreements, as shall be approved by the City Manager after consultation with the City Attorney and the Authority's bond counsel.

Section 22. The City Council hereby approves delivery of a certified copy of this Resolution to the Authority.

Section 23. This Resolution shall take effect upon its adoption.

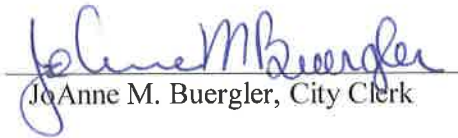
**DULY AND REGULARLY ADOPTED** this 25<sup>th</sup> day of November, 2014.



**CITY OF ROHNERT PARK**

  
Joseph T. Callinan, Mayor

**ATTEST:**

  
JoAnne M. Buergler, City Clerk

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