

RESOLUTION NO. 2015-024

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING AN AGREEMENT REGARDING EXPENDITURE OF SERIES 1999 EXCESS BOND PROCEEDS FOR SPECIFIED PROPOSED PUBLIC IMPROVEMENTS CONSISTENT WITH BOND COVENANTS

WHEREAS, the Redevelopment Dissolution Law (AB1x 26, enacted June 28, 2011, as amended by AB 1484, enacted June 27, 2012) provided for creation of the Successor Agency ("Successor Agency") to the Community Development Commission of the City of Rohnert Park ("CDC") and required the Successor Agency to expeditiously wind down the affairs of the CDC as directed by the oversight board created pursuant to Section 34179 of the California Health and Safety Code ("Oversight Board"); and

WHEREAS, following the successful completion of certain statutory prerequisites, the Successor Agency received a Finding of Completion from the State of California Department of Finance by letter dated April 26, 2013; and

WHEREAS, Health and Safety Code Section 34191.4(c) provides that once a finding of completion has been issued by the Department of Finance, the successor agency is authorized to use bond proceeds for the purposes for which the bonds were sold; and

WHEREAS, the Successor Agency may designate the use of and commit indebtedness obligation proceeds that were derived from indebtedness issued for redevelopment purposes on or before December 31, 2010, and that remain available after the satisfaction of enforceable obligations that have been approved on a Recognized Obligation Payment Schedule ("ROPS") and that are consistent with the indebtedness obligation covenants (hereafter, "Excess Bond Proceeds"); and

WHEREAS, the City Council of the City of Rohnert Park ("City") previously approved by Resolution No. 2014-108 adopted September 9, 2014, and the City and the Successor Agency thereafter entered into, that certain Agreement Regarding Expenditure of Excess Bond Proceeds dated as of September 29, 2014 to allow the Successor Agency to transfer to the City the Excess Bond Proceeds (the "Series 2007 Excess Bond Proceeds") remaining from the issuance of certain Tax Allocation Bonds, Series 2007R Bonds in the original principal amount of \$34,680,000 (the "Series 2007 Bonds") and to require the City to use the Series 2007 Excess Bond Proceeds for the purposes identified in and consistent with the Series 2007 Bonds covenants and the requirements of the Community Redevelopment Law; and

WHEREAS, the CDC issued its Rohnert Park Redevelopment Project Tax Allocation Bonds, Series 1999 (the "Series 1999 Bonds") in the total original principal amount of \$11,936,650.95; and

WHEREAS, the Series 1999 Bonds were issued pursuant to that certain First Supplemental Indenture of Trust, dated as of January 1, 1999, between the CDC and U.S. Bank Trust National Association as trustee ("Trustee"), supplemental to an Indenture of Trust dated as of May 1, 1991 (collectively, the "Indenture"); and

WHEREAS, the Indenture requires that the Series 1999 Bonds proceeds be expended for redevelopment purposes and in compliance with federal Tax Code requirements, as further provided in the Tax and Nonarbitrage Certificate executed by the CDC in connection with issuance of the Series 1999 Bonds and described in the Official Statement for the Series 1999 Bonds; and

WHEREAS, there are \$627,545.62 in Excess Bond Proceeds from the Series 1999 Bonds ("Series 1999 Excess Bond Proceeds") remaining; and

WHEREAS, the City and the Successor Agency desire to use the Series 1999 Excess Bond Proceeds consistent with the Series 1999 Bonds covenants to pay costs related to capital improvements of certain publicly-owned facilities located in the Rohnert Park Redevelopment Project Area and identified in the staff report accompanying this Resolution; and

WHEREAS, the City desires to enter into an agreement with the Successor Agency to allow the Successor Agency to transfer the remaining Series 1999 Excess Bond Proceeds to the City and to require the City to use the Series 1999 Excess Bond Proceeds for the purposes identified in and consistent with the Series 1999 Bonds covenants and the requirements of the Community Redevelopment Law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ROHNERT PARK DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Based on the foregoing recitals, the City Council hereby approves and authorizes the Mayor or City Manager to execute the Agreement Regarding Expenditure of Series 1999 Excess Bond Proceeds in the form attached to the staff report accompanying this Resolution, subject to minor, technical changes approved by the City Attorney.

Section 2. The Mayor and City Manager or his designee are authorized and directed to execute such additional instruments and to take such actions as are necessary to carry out the intent of this Resolution.

DULY AND REGULARLY ADOPTED this 10th day of February, 2015.

CITY OF ROHNERT PARK


Amy O. Ahanotu, Mayor

ATTEST:


JoAnne M. Buergler, City Clerk



Attachment: Agreement

CALLINAN: AYE MACKENZIE: Absent STAFFORD: AYE BELFORTE: Absent AHANOTU: AYE

AYES: (3) NOES: (0) ABSENT: (2) ABSTAIN: (0)

**AGREEMENT REGARDING
EXPENDITURE OF SERIES 1999 EXCESS BOND PROCEEDS
(Rohnert Park Redevelopment Project Tax Allocation Bonds Series 1999)**

This Agreement Regarding Expenditure of Series 1999 Excess Bond Proceeds (this “**Agreement**”) is entered into effective as of _____, 2015 (“**Effective Date**”) by and between the Successor Agency to the Community Development Commission of the City of Rohnert Park (“**Successor Agency**”) and the City of Rohnert Park, a municipal corporation (“**City**”). The Successor Agency and the City are hereinafter collectively referred to as the “**Parties**.”

R E C I T A L S

A. Pursuant to authority granted under the Community Redevelopment Law (California Health and Safety Code Section 33000 *et seq.*) (“**CRL**”), the former Community Development Commission of the City of Rohnert Park (“**CDC**”) had responsibility to implement the Rohnert Park Redevelopment Project Area (the “**Project Area**”), originally approved by Ordinance No. 479 enacted by the City Council of the City of Rohnert Park (the “**City Council**”).

B. Pursuant to Resolution No. 2012-10 adopted by the City Council on January 10, 2012, the City agreed to serve as the Successor Agency to the CDC commencing on February 1, 2012 pursuant to Assembly Bill 1x 26 (“**AB 26**”).

C. On April 26, 2013 the Successor Agency received its finding of completion from the Department of Finance.

D. Health and Safety Code Section 34191.4(c) provides that a successor agency that has been issued a finding of completion by the Department of Finance may use proceeds of bonds issued before December 31, 2010 for the purposes for which the bonds were sold. Further, the Successor Agency may designate the use of and commit indebtedness obligation proceeds that were derived from bonds issued for redevelopment purposes on or before December 31, 2010, and that remain available after the satisfaction of enforceable obligations that have been approved on a Recognized Obligation Payment Schedule (“**ROPS**”) and that are consistent with the bond obligation covenants (“**Excess Bond Proceeds**”).

E. Health and Safety Code Section 34191.4(c) further provides that the expenditure of Excess Bond Proceeds must be listed separately on the ROPS.

F. The City and the Successor Agency have previously entered into that certain Agreement Regarding Expenditure of Excess Bond Proceeds dated as of September 29, 2014 to allow the Successor Agency to transfer to the City the Excess Bond Proceeds (the “**Series 2007 Excess Bond Proceeds**”) remaining from the issuance of certain Tax Allocation Bonds, Series 2007R Bonds in the original principal amount of \$34,680,000 (the “**Series 2007 Bonds**”) and to require the City to use the Series 2007 Excess Bond Proceeds for the purposes identified in and consistent with the Series 2007 Bonds covenants and the requirements of the CRL.

G. Pursuant to that certain First Supplemental Indenture of Trust dated as of January 1, 1999 (supplemental to the Indenture of Trust dated as of May 1, 1991), and executed by and between the CDC and U.S. Bank Trust National Association as trustee (collectively, the “**Indenture**”), the CDC issued Tax Allocation Bonds, Series 1999 Bonds in the original principal amount of \$11,936,650.95 (the “**Series 1999 Bonds**”).

H. Pursuant to the Indenture, proceeds from the sale of the Series 1999 Bonds are required to be used solely for the purposes of redevelopment and in compliance with the requirements of the federal Tax Code as further provided in the Tax and Nonarbitrage Certificate executed by the CDC in connection with issuance of the Series 1999 Bonds (the “**Tax Certificate**”) and described in the Official Statement for the Series 1999 Bonds (“**Official Statement**”). The Tax Certificate and the Official Statement are on file with the City Clerk of the City of Rohnert Park.

I. The Tax Certificate provides that the Series 1999 Bonds are to be sold and delivered for the purpose of financing certain capital costs of the Issuer, and the Official Statement provides that the proceeds of the Series 1999 Bonds are to be used to finance capital improvements in the Project Area.

J. The City and the Successor Agency desire to use the Series 1999 Excess Bond Proceeds consistent with the Series 1999 Bonds covenants to pay costs related to capital improvements of certain publicly-owned facilities located in the Project Area and identified in Exhibit A to this Agreement (“**Proposed Public Improvements**”), incorporated herein by this reference.

K. The Parties now desire to enter into this Agreement to allow the Successor Agency to transfer the remaining Series 1999 Excess Bond Proceeds to the City and to require the City to use the Series 1999 Excess Bond Proceeds for the purposes identified in and consistent with the Series 1999 Bonds covenants and the requirements of the CRL.

L. The execution of this Agreement was approved by the City Council acting in its capacity as the governing board of the City and in its capacity as the governing board of the Successor Agency by resolutions adopted on _____, 2015.

M. The execution of this Agreement by the Successor Agency was approved by the Oversight Board by resolution adopted on _____, 2015.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises herein contained, the Parties hereby agree as follows.

A G R E E M E N T

1. Incorporation of Recitals. The Parties acknowledge the truth of the foregoing Recitals which by this reference are incorporated into this Agreement.

2. Term. The term of this Agreement shall commence on the Effective Date, and shall continue in effect until the date that all Series 1999 Excess Bond Proceeds are expended in accordance with the requirements of this Agreement.

3. Use of Series 1999 Excess Bond Proceeds. The City agrees that it shall use the Series 1999 Excess Bond Proceeds solely for the purposes identified in Recitals I and J above, the projects identified in this Section 3, or, as determined by the City Council, for other infrastructure projects consistent with the Series 1999 Bonds covenants. Among other projects, the City agrees to use the Series 1999 Excess Bond Proceeds for the following infrastructure projects: B-Pool Renovation and New Restroom, Sports Center Locker Rooms Retrofit, Public Safety Main HVAC Replacement, A-Park Restroom Renovation and L-Park Restroom Renovation. City shall notify Successor Agency and Oversight Board if City Council decides to use the Series 1999 Excess Bond Proceeds for infrastructure projects not identified in Recitals I or J or in this Section 3.

4. Transfer of Excess Bond Proceeds. Within 120 days of the execution of this Agreement, subject to DOF approval of the inclusion of this Agreement on the ROPS 15-16A, the Successor Agency shall transfer the remaining Series 1999 Excess Bond Proceeds to the City, and the City shall deposit such funds into a Series 1999 Excess Bond Proceeds Fund for City's use solely in accordance with the terms, conditions, and purposes set forth in this Agreement. Funds deposited into a Series 1999 Excess Bond Proceeds Fund shall not be commingled with any City funds. As of the Effective Date, the amount of Series 1999 Excess Bond Proceeds not separately identified on the ROPS for project expenditures during the ROPS 15-16A period equals the sum of Six Hundred Twenty Seven Thousand Five Hundred Forty Five and 62/100 Dollars (\$627,545.62).

5. Bi-annual Report to Successor Agency. City shall provide Successor Agency and Oversight Board with a bi-annual written statement identifying the amount of Series 1999 Excess Bond Proceeds expended in the January through June and July through December six-month periods, the date of the expenditure, and a brief description of the projects funded with the Series 1999 Excess Bond Proceeds.

6. Project Approvals; Environmental Review. This Agreement is not intended to limit in any manner the discretion of City in connection with the issuance of approvals and entitlements for the projects described in this Agreement, including without limitation, the undertaking and completion of any required environmental review pursuant to CEQA and NEPA, as applicable, and the review and approval of plans and specifications.

7. Severability. If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be accomplished. In addition, the Parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible.

8. No Third-Party Beneficiaries; Assignments. Nothing in this Agreement is intended to create any third-party beneficiaries to this Agreement, and no person or entity other than the Successor Agency and the City, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

9. Further Assurances. Each Party agrees to execute, acknowledge and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of the transactions contemplated by this Agreement.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

12. Amendments. This Agreement may be modified or amended, in whole or in part, only by an instrument in writing, executed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

CITY:

City of Rohnert Park

SUCCESSOR AGENCY:

Successor Agency to the Community
Development Commission of the City of
Rohnert Park

By: _____
Amy O. Ahanotu, Mayor

By: _____
Darrin Jenkins, City Manager
City of Rohnert Park

ATTEST:

By: _____
JoAnne Buergler, City Clerk

ATTEST:

By: _____
Eydie Tacata, Oversight Board
Clerk

APPROVED AS TO FORM:

By: _____
Michelle Marchetta Kenyon
City Attorney

APPROVED AS TO FORM:

By: _____
Elizabeth Ann Strauss
Oversight Board Counsel

Exhibit A

Proposed Public Improvements

[to be inserted]

Exhibit A

EXHIBIT A

Proposed Public Improvements List

Available 2007R TAB Funds = \$5,694,989
 1999 TAB Funds = 627,546
TOTAL \$6,322,535

Project	Estimated Cost	Construction Contingency	Total Construction	Design, Environmental, Legal, Construction Management	Project Total
B-Pool Renovation and New Restroom	\$700,000	\$140,000	\$840,000	\$277,200	\$1,117,200
Sports Center Locker Rooms Retrofit	255,000	51,000	306,000	100,655	406,655
Public Safety Main HVAC Replacement	280,000	56,000	336,000	110,880	446,880
A-Park Restroom Renovation	220,000	44,000	264,000	87,120	351,120
L-Park Restroom Renovation	85,000	17,000	102,000	33,660	135,660
PAC HVAC Replacement (4 units)	350,000	70,000	420,000	42,000	462,000
Community Center Roof Replacement	150,000	30,000	180,000	59,400	239,400
Senior Center Roof Replacement	150,000	30,000	180,000	54,000	234,000
Senior Center Restroom Renovation	70,000	14,000	84,000	25,200	109,200
PAC Roof Replacement	800,000	160,000	960,000	316,800	1,276,800
Library Parking Lot Paving and Landscaping	145,000	29,000	174,000	60,900	234,900
Community Center Parking Lot Overlay	820,000	164,000	984,000	324,720	1,308,720
Total Bond Funds				\$6,322,535	\$6,322,535