

RESOLUTION NO. 2015--160

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AS SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING AN AGREEMENT REGARDING EXPENDITURE OF SERIES 2007R 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 CDC issued its Rohnert Park Redevelopment Project Tax Allocation Bonds, Series 2007R (the "Series 2007R Bonds") in the total original principal amount of \$34,680,000; and

WHEREAS, the Series 2007R Bonds were issued pursuant to that certain Third Supplemental Indenture of Trust, dated as of April 1, 2007, between the CDC and Union Bank of California as trustee ("Trustee"), supplemental to a Master Indenture dated as of May 1, 1991 (collectively, the "Indenture"); and

WHEREAS, the Indenture requires that the Series 2007R Bonds proceeds be expended for redevelopment purposes and in compliance with federal Tax Code requirements, as further provided in the Tax Certificate executed by the CDC in connection with issuance of the Series 2007R Bonds and described in the Official Statement for the 2007R Bonds; and

WHEREAS, there are \$10,055,725 in Excess Bond Proceeds from the Series 2007R Bonds ("Series 2007R Excess Bond Proceeds") remaining; and

WHEREAS, the City of Rohnert Park ("City") and the Successor Agency desire to use the Series 2007R Excess Bond Proceeds consistent with the Series 2007R 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 Successor Agency desires to enter into an agreement with the City to allow the Successor Agency to transfer the remaining Series 2007R Excess Bond Proceeds to the City and to require the City to use the Series 2007R Excess Bond Proceeds for the purposes identified in and consistent with the Series 2007R Bonds covenants and the requirements of the Community Redevelopment Law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ROHNERT PARK, AS SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF ROHNERT PARK, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Based on the foregoing recitals, the Successor Agency hereby approves and authorizes the City Manager, following approval by the Oversight Board and Department of Finance, to execute the Agreement Regarding Expenditure of Series 2007R 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 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 22nd day of September, 2015.

**SUCCESSOR AGENCY TO THE COMMUNITY
DEVELOPMENT COMMISSION OF THE CITY
OF ROHNERT PARK**



Amy O. Ahanotu, Mayor

ATTEST:


JoAnne Buerger, City Clerk

CALLINAN: Aye MACKENZIE: Aye STAFFORD: Absent BELFORTE: Aye AHANOTU: Aye

AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

**AGREEMENT REGARDING
EXPENDITURE OF EXCESS BOND PROCEEDS
(Rohnert Park Redevelopment Project Tax Allocation Bonds Series 2007R)**

This Agreement Regarding Expenditure of Series 2007R 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 that certain Third Supplemental Indenture of Trust dated as of April 1, 2007 (supplemental to the Indenture of Trust dated as of May 1, 1991), and executed by and between the CDC and Union Bank of California as trustee (collectively, the “**Indenture**”), the CDC issued Tax Allocation Bonds, Series 2007R Bonds in the original principal amount of \$34,680,000 (the “**Series 2007R Bonds**”).

C. Pursuant to the Indenture, proceeds from the sale of the Series 2007R 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 Certificate executed by the CDC in connection with issuance of the Series 2007R 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.

D. 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 x1 26 (“**AB 26**”).

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

F. 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 (hereafter, “**Series 2007R Excess Bond Proceeds**”).

G. Health and Safety Code Section 34191.4(c) further provides that the expenditure of Series 2007R Excess Bond Proceeds must be listed separately on the ROPS.

H. The Tax Certificate provides that the Series 2007R 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 2007R Bonds are to be used to finance capital improvements in the Project Area.

I. The City and the Successor Agency desire to use the Series 2007R Excess Bond Proceeds consistent with the Series 2007R Bond 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.

J. The Successor Agency having received its Finding of Completion, the Parties now desire to enter into this Agreement to allow the Successor Agency to transfer the remaining Series 2007R Excess Bond Proceeds to the City and to require the City to use the Series 2007R Excess Bond Proceeds for the purposes identified in and consistent with the Series 2007R Bonds covenants and the requirements of the CRL.

K. 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 September 22, 2015.

L. The execution of this Agreement by the Successor Agency was approved by the Oversight Board by resolution adopted on September 24, 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 2007R Excess Bond Proceeds are expended in accordance with the requirements of this Agreement.

3. Use of Series 2007R Excess Bond Proceeds. The City agrees that it shall use the Series 2007R Excess Bond Proceeds solely for the purposes identified in Recitals H and I above, the projects identified in the **Proposed Public Improvements (Exhibit A)**, or, as determined by the City Council, for other infrastructure projects consistent with the Series 2007R Bonds covenants. The City shall notify Successor Agency and Oversight Board if City Council decides to use the Series 2007R Excess Bond Proceeds for infrastructure projects not identified in Recitals H or I 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 15-16B, the Successor Agency shall transfer Series 2007R Excess Bond Proceeds to the City as funds become available, and the City shall deposit such funds into a Series 2007R 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 2007R Excess Bond Proceeds Fund shall not be commingled with any City funds. As of the Effective Date, the amount of Series 2007R Excess Bond Proceeds not separately identified on the ROPS for project expenditures during the ROPS 15-16B period equals the sum of Ten Million Fifty Five thousand, Seven Hundred Twenty Five Dollars (\$10,055,725).

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 2007R 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 2007R 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

Per Resolution 2015-_____ approved by the
Rohnert Park City Council at its meeting of
September 22, 2015

ATTEST:

By: _____
JoAnne Buergler, City Clerk

APPROVED AS TO FORM:

By: _____
Michelle Marchetta-Kenyon
City Attorney

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

Per Resolution 2015-_____ approved by the
Rohnert Park City Council at its meeting of
September 22, 2015

ATTEST:

By: _____
JoAnne Buergler, City Clerk

APPROVED AS TO FORM:

By: _____
Michelle Marchetta-Kenyon
City Attorney

Exhibit A

Proposed Public Improvements

- ADA path of travel rehabilitation in parks
- Animal Shelter exterior coating/siding
- Animal Shelter HVAC replacement
- Community Center exterior coating
- Community Center HVAC replacement
- Community Center MU floor replacement
- Ladybug Park roof replacement
- PAC exterior coating
- PAC HVAC replacement (5 units)
- Public Safety Main mini-split AC replacement
- Replacement of stadium lighting in parks
- Senior Center exterior coating/siding
- Senior Center HVAC replacement
- Senior Center parking lot overlay
- Sports Center exterior coating
- Sports Center new AC system
- Street paving rehabilitation in project area
- ADA Compliance (transition study implementation, sidewalk repair)
- Community Center courtyard renovation
- Park field/irrigation renovation
- Park picnic area renovation
- Public Safety Main floor replacement
- Public Safety Main interior coating
- Skate feature in project area
- Sports Center Activity Room equipment/floor
- Sports Center Weight Room equipment/floor