

**RESOLUTION NO. 2015-128**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK  
AUTHORIZING AND APPROVING AN AGREEMENT REGARDING THE  
ESTABLISHMENT AND COLLECTION OF REGIONAL TRAFFIC IMPACT FEES  
FOR THE NORTHWEST SPECIFIC PLAN AREA BETWEEN THE CITY OF  
ROHNERT PARK AND THE COUNTY OF SONOMA**

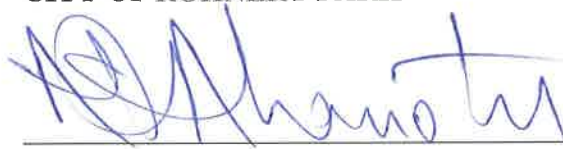
**WHEREAS**, the City of Rohnert Park and County of Sonoma have expressed a desire to enter into an agreement regarding the establishment and collection of regional traffic impact fees for the Northwest Specific Plan Area,

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park that it does hereby authorize and approve the Agreement by and between the City of Rohnert Park, a municipal corporation, and the County of Sonoma Regarding the Establishment and Collection of Regional Traffic Impact Fees for the Northwest Specific Plan Area ("Agreement") in substantially similar form as attached hereto as Exhibit "A" subject to review and approval by the City Attorney.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Mayor is hereby authorized and directed to execute the Agreement.

**DULY AND REGULARLY ADOPTED** this 28th day of July, 2015.

**CITY OF ROHNERT PARK**



Mayor

**ATTEST:**

  
City Clerk

CALLINAN: Aye MACKENZIE: Aye STAFFORD: Aye BELFORTE: Aye AHANOTU: Aye  
AYES: ( 5 ) NOES: ( 0 ) ABSENT: ( 0 ) ABSTAIN: ( 0 )

**EXHIBIT A**

**AGREEMENT REGARDING THE ESTABLISHMENT AND  
COLLECTION OF REGIONAL TRAFFIC IMPACT FEES FOR  
THE NORTHWEST SPECIFIC PLAN AREA BETWEEN THE CITY OF ROHNERT  
PARK AND THE COUNTY OF SONOMA AND**

**AGREEMENT REGARDING THE ESTABLISHMENT AND COLLECTION OF  
REGIONAL TRAFFIC IMPACT FEES FOR THE NORTHWEST SPECIFIC PLAN AREA  
BETWEEN THE CITY OF ROHNERT PARK AND THE COUNTY OF SONOMA**

This Agreement Regarding the Establishment and Collection of Regional Traffic Impact Fees For the Northwest Specific Plan Area (hereinafter "Agreement") is made and entered into as of July \_\_, 2015 ("Effective Date") by and between the CITY OF ROHNERT PARK ("CITY") and the COUNTY OF SONOMA ("COUNTY").

**RECITALS**

1. On November 25, 2014, CITY adopted Resolution No. 2014-157 approving a Specific Plan for the Northwest Specific Plan Area Located South of Millbrae Avenue, West of Dowdell Avenue, North of Business Park Drive, and east of Langner Avenue in Sonoma County, California ("NWSPA").

2. On November 25, 2014, CITY adopted Resolution No. 2014-155 certifying the Final Environmental Impact Report ("FEIR"), Adopting Statement of Overriding Considerations, and Adopting Mitigation Monitoring Reporting Program for the NWSPA and annexation for the NWSPA. The FEIR identified regional traffic impacts from development of the NWSPA that cannot be mitigated unilaterally primarily because they are outside CITY'S jurisdiction.

3. On November 25, 2014, CITY adopted Resolution No. 2014-158 initiating an application for a reorganization involving annexation to the CITY and concurrent detachment from the Rincon Valley Fire Protection District and County Service Area No. 41 of the NWSPA. CITY submitted an application for this reorganization to the Local Agency Formation Commission of the County of Sonoma ("LAFCO") in January 2015.

4. The FEIR includes a mitigation measure that commits the CITY to coordinating with COUNTY to establish a regional impact fee program which would allow CITY to collect fees from development within the NWSPA and contribute a proportional share of the total mitigation costs of widening Stony Point Road associated with improving operations of the intersections at Stony Point Road/Millbrae Avenue and Stony Point Road/Wilfred Avenue.

5. In order to establish and implement regional traffic impact fees for development within the NWSPA ("NWSPA Regional Impact Fees"), it will be necessary for CITY to identify, in consultation with the COUNTY, specific construction projects that will mitigate future traffic impacts, the costs of those construction projects and the NWSPA's share of those construction projects. In accordance with the Mitigation Fee Act (Government Code Section 66000 et. seq.), this establishment and implementation effort must include preparation of an appropriate study establishing a reasonable relationship between: the fee's use and the type of development project on which the fee is imposed; the need for the public facility and the type of development project on which the fee is imposed; and the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed ("Nexus Study").

6. Mitigation of the regional traffic impacts of the NWSPA, as identified in the FEIR, through execution by CITY and COUNTY of this Agreement was a condition to approval by LAFCO of the Rohnert Park Reorganization No. 2014-0001 (Northwest Specific Plan), involving annexation to the City of Rohnert Park and detachment from Rincon Valley Fire Protection District and County Service Area No. 41.

7. CITY warrants to COUNTY that CITY is capable of and possesses the skill, experience, ability, background, certification, and knowledge to approve, fund, and oversee the preparation of the Nexus Study required by this Agreement.

8. CITY wishes to transfer to COUNTY all NWSPA Regional Impact Fees collected from development within NWSPA following adoption of the appropriate Nexus Study, and COUNTY is willing to accept such NWSPA Regional Impact Fees, to allocate those NWSPA Regional Impact Fees exclusively to projects identified in the Nexus Study, to comply with all reporting requirements of the Mitigation Fee Act and to refund NWSPA Regional Impact Fees to appropriate parties as required by the Mitigation Fee Act, if COUNTY does not accomplish the projects identified in the Nexus Study (or, if the administrative costs of refunding exceed the amount to be refunded, to reallocate those Fees to related purposes in accordance with Government Code section 66001(f)).

9. CITY and COUNTY desire to enter into this Agreement to define a framework to enable the two parties to work cooperatively in the establishment, collection and administration of NWSPA Regional Impact Fees.

**NOW, THEREFORE**, in consideration of the foregoing, CITY and COUNTY do hereby agree as follows:

#### **I. CITY AGREES:**

1. Preparation of Nexus Study. CITY shall be responsible for authorizing, conducting and funding a Nexus Study for the purpose of establishing regional traffic improvements necessitated by development within the NWSPA which study shall be used to establish NWSPA Regional Impact Fees. CITY agrees that the Nexus Study will be prepared in accordance with all requirements of the Mitigation Fee Act (Government Code Section 66000 et seq.).

2. Collection of NWSPA Regional Impact Fees. CITY hereby agrees to collect from all developers who develop within the NWSPA all NWSPA Regional Impact Fees designated in the Nexus Study prior to CITY's approval of occupancy of the development project or any portion thereof.

3. Transfer of NWSPA Regional Impact Fees to COUNTY. CITY shall, on a quarterly basis, transfer to COUNTY for construction of those projects identified in the Nexus Study, all NWSPA Regional Impact Fees collected by CITY from developers within the NWSPA.

4. Compliance with Laws. With regard to the NWSPA Regional Impact Fees, CITY shall at all times use reasonable care to comply with all applicable laws of the United States, the State of California, the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement. Notwithstanding the foregoing, COUNTY recognizes and understands that legal challenges to the NWSPA Regional Impact Fees may occur, and COUNTY agrees that CITY shall not be deemed to have breached the provisions of this Paragraph solely because a legal challenge to an Impact Fee is successful.

5. Records. For the duration of this Agreement, and for five (5) years following the discharge of this Agreement, CITY shall make available to COUNTY all records relating to the performance of this Agreement including all records produced in compliance with the Mitigation Fee Act.

6. Failure to Comply. If a court of law determines that CITY's collection and/or transfer of NWSPA Regional Impact Fees under this Agreement is not in compliance with the Mitigation Fee Act, CITY shall promptly take all reasonable steps necessary to bring the collection and transfer of such fees into compliance with the Mitigation Fee Act. CITY acknowledges that if it fails to collect and transfer fees in accordance with this Agreement, CITY shall be responsible for undertaking alternative mitigation of the regional traffic impacts of the NWSPA as required under Mitigation Measure TRANS-1A of the FEIR.

## **II. COUNTY AGREES:**

1. Segregation of Fees. Upon receipt of NWSPA Regional Impact Fees from CITY, COUNTY shall hold the NWSPA Regional Impact Fees in a separate, unique account and allocate interest earned on held funds to said account.

2. Use of NWSPA Regional Impact Fees. COUNTY agrees that all NWSPA Regional Impact Fees received from CITY shall be used exclusively for construction projects identified in the Nexus Study, except as otherwise provided in the Mitigation Fee Act.

3. Administration of Funds. COUNTY's receipt and administration of all funds received from City under this Agreement shall be in compliance with the Mitigation Fee Act.

4. Compliance with Laws. With regard to the NWSPA Regional Impact Fees, COUNTY shall at all times use reasonable care to comply with all applicable laws of the United States, the State of California, the County, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement, including but not limited to the Mitigation Fee Act. Notwithstanding the foregoing, CITY recognizes and understands that legal challenges to the NWSPA Regional Impact Fees may occur, and CITY agrees that COUNTY shall not be deemed to have breached the provisions of this Paragraph solely because a legal challenge to the NWSPA Regional Impact Fee is successful.

5. Records. For the duration of this Agreement, and for five (5) years following the discharge of this Agreement, COUNTY shall make available to CITY all records relating to the performance of this Agreement including all records produced in compliance with the Mitigation Fee Act.

6. Failure to Comply. COUNTY agrees that if a court of law has determined that COUNTY's receipt and administration of fees collected under this Agreement are not in compliance with the Mitigation Fee Act, the CITY's obligations under this Agreement to transmit NWSPA Regional Impact Fees to COUNTY shall be suspended until such time that a court of law has determined that the COUNTY has cured such non-compliance or the parties have otherwise agreed. During the time of suspension, CITY shall continue to collect the NWSPA Regional Impact Fees and shall hold such fees in a separate, unique account and allocate interest earned on held funds to said account, unless a court of law has ordered, or the parties have agreed to, a different allocation or distribution of the NWSPA Regional Impact Fees. Once a court of law has determined that the COUNTY has cured any non-compliance with the Mitigation Fee Act, CITY shall transmit to COUNTY all NWSPA Regional Impact Fees accumulated during the suspension, together with interest accrued thereon, for COUNTY's use in accordance with this Agreement. In the event that COUNTY fails to cure such non-compliance within the timeframes for expenditure of fees under the Mitigation Fee Act, CITY shall refund NWSPA Regional Impact Fees to appropriate parties or reallocate such fees as required by the Mitigation Fee Act.

### **III. IT IS MUTUALLY AGREED:**

1. Term. This Agreement will remain in effect until fully performed or otherwise discharged by mutual agreement of the parties as provided in Paragraph 3 or 14 of this Section III.

2. Satisfaction of FEIR Mitigation Measures. It is understood between CITY and COUNTY that execution and implementation of this Agreement satisfies all CITY obligations under Mitigation Measure TRANS-1A of the FEIR.

3. Discharge. This Agreement shall be subject to discharge as follows:

a. This Agreement may be canceled by a party for any uncured, ongoing breach of any material obligation, covenant or condition hereof by the other party, upon notice to the breaching party. With respect to any breach which is reasonably capable of being cured, the breaching party shall have thirty (30) days from the date of the notice to initiate steps to cure. If the breaching party has initiated steps to cure within thirty (30) days and diligently pursues cure, such party shall be allowed a reasonable time to complete that cure, not to exceed one hundred-eighty (180) days from the date of the initial notice, unless a further extension is granted by the non-breaching party. Such extension shall not be unreasonably denied, conditioned or delayed. On cancellation, the non-breaching party retains the same rights as a party exercising its right to terminate under the provisions of Paragraph 3(b) below, except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance. If the

Agreement is canceled by CITY because COUNTY has failed to meet the requirements to use the NWSPA Regional Impact Fees towards regional traffic impacts identified in the NWSPA in accordance with the Mitigation Fee Act and the timeframes set forth therein, CITY may, at its option, demand repayment of all unexpended and uncommitted funds and funds determined by audit not to have been expended or committed as provided for in this Agreement and the Mitigation Fee Act, with interest accrued thereon and, thereafter, CITY shall be responsible for undertaking alternative mitigation of the regional traffic impacts of the NWSPA as required under Mitigation Measure TRANS-1A of the FEIR.

b. By mutual consent of both parties, this Agreement may be terminated at any time. Upon termination by mutual consent, (i) COUNTY agrees that it shall be responsible for third party claims arising from COUNTY's use of any unexpended and uncommitted funds originally provided to COUNTY under this Agreement, and any interest that has accrued thereon; and (ii) CITY agrees that it shall be responsible for undertaking alternative mitigation of the regional traffic impacts of the NWSPA as required under Mitigation Measure TRANS-1A of the FEIR.

c. Notwithstanding anything in this paragraph 3 of Section III, to the contrary, CITY may not discharge, cancel, or terminate this Agreement if COUNTY has entered into an agreement with any third party for the funding, design and/or implementation of any construction project identified in the Nexus Study to be funded, in whole or in part, by NWSPA Regional Impact Fees provided or to be provided by CITY under this Agreement, and the discharge, cancellation, or termination would preclude COUNTY from fully performing its duties and obligations under the third-party agreement.

4. Indemnity. Each party to this Agreement (the "Indemnifying Party") agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the other party (the "Indemnified Party") (including the Indemnified Party's supervisors, officers, agents, and employees) from and against any and all liabilities, actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, including the Indemnifying Party, to the extent resulting from the Indemnifying Party's performance of its obligations, or any failure to perform its obligations, under this Agreement, but excluding liabilities, actions, claims, damages, disabilities, or expenses to the extent caused by or due to the negligence or willful misconduct of the Indemnified Party. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the parties hereto or their agents under workers' compensation acts, disability benefit acts, or other employee benefit acts.

5. Notices. Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such addresses which may be specified in writing to the parties hereto.

To CITY:

City Manager  
City of Rohnert Park  
130 Avram Avenue  
Rohnert Park, CA 94928  
707-588-2243  
admin@rpcity.org

To COUNTY:

Director  
Permit and Resource Management Department  
2550 Ventura Avenue  
Santa Rosa, CA 95403  
(707) 565-1900

6. Additional Acts and Documents. Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.

7. Integration. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein.

8. Amendment. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

9. Independent Agency. COUNTY renders its services under this Agreement as an independent agency. None of the COUNTY's agents or employees shall be agents or employees of the CITY. None of the CITY's agents or employees shall be agents or employees of the COUNTY.

10. Assignment. The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

11. Successors. This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the COUNTY or CITY as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.

12. Severability. Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.



13. Survival. The covenants and obligations in paragraph 6 of Section II, and indemnification obligations in paragraph 4 of Section III of this Agreement shall survive the termination of this Agreement.

14. Limitation. All obligations of CITY to transfer funds under the terms of this Agreement are expressly subject to CITY's continued legal authority to collect and transfer the NWSPA Regional Impact Fees collected from development. If for any reason CITY's right to collect or expend such NWSPA Regional Impact Fees is terminated or suspended in whole or part by a court of law, CITY shall promptly notify COUNTY, and the parties shall consult on a course of action. If, after ninety (90) days, a course of action is not agreed upon by the parties, this Agreement shall be terminated, restricted or suspended commensurate with the judicially determined limits of the City's legal authority. CITY acknowledges that, notwithstanding such termination, restriction or suspension of this Agreement, CITY shall remain responsible for mitigation of the regional traffic impacts of the NWSPA, as required under Mitigation Measure TRANS-1A of the FEIR.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the Effective Date.

**CITY OF ROHNERT PARK**

**COUNTY OF SONOMA**

By: \_\_\_\_\_  
Amy Ahanotu, Mayor

By: \_\_\_\_\_  
Susan Gorin, Chairwoman

**ATTEST:**

**APPROVED AS TO SUBSTANCE:**

By: \_\_\_\_\_  
JoAnne Buerger, City Clerk

By: \_\_\_\_\_  
Veronica Ferguson, CAO

**APPROVED AS TO LEGAL FORM:**

**APPROVED AS TO LEGAL FORM:**

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

By: \_\_\_\_\_  
County Counsel