

## **RESOLUTION NO. 2015-146**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING A PUBLIC FACILITIES FEE CREDIT AGREEMENT WITH UNIVERSITY DISTRICT LLC AND VAST OAK PROPERTIES L.P. AND FINDING THE ACTION EXEMPT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, on November 22, 2011, the City Council of the City of Rohnert Park ("City") adopted Resolution No 2011-112 updating its Public Facilities Fees and finding this action Categorically Exempt under the California Environmental Quality Act; 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 ("Developer"); and

**WHEREAS**, the Developer Agreement requires the Developer to make prepayments of Public Facilities Fees, at the City's direction, in order to fund the construction of the Eastside Trunk Sewer Phase 3 and Snyder Lane Widening Projects; and

**WHEREAS**, the City has awarded the construction contract for the Eastside Trunk Sewer Phase 3 and Snyder Lane Widening Projects and required the Developer to make the prepayments of Public Facilities Fees; and

**WHEREAS**, the City and Developer desire to enter into a Public Facilities Fee Credit Agreement to recognize the prepayment of Public Facilities Fees, the Public Facilities Fee Credits due to Developer and the applicability and transferability of these Public Facilities Fee Credits only to development of the project as described in the Development Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park that it does hereby authorize and approve the Public Facilities Fee Credit Agreement with University District LLC and Vast Oak Properties L.P. attached as Exhibit A.

**BE IT FUTHER RESOLVED** that based on the evidence presented at the duly noticed public meeting of August 25, 2015, the City Council of the City of Rohnert Park finds that this action is categorically exempt from environmental review pursuant to California Environmental Quality Act guidelines section 15061(b)(3) because the payment of Public Facilities Fees provides a means of mitigating environmental impacts which have been identified in other environmental analyses including the General Plan EIR.

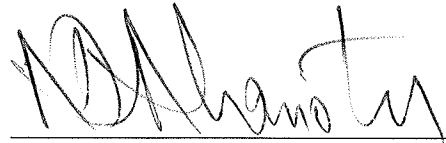
**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized and directed to execute the Public Facilities Fee Credit Agreement, in substantially similar form to that agreement attached hereto and incorporated by this reference as Exhibit A, subject to minor modification by the City Manager or City Attorney.



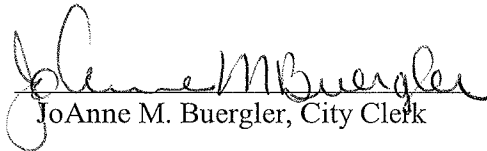
**BE IT FURTHER RESOLVED** that the Finance Director is hereby authorized and directed to take all actions necessary to effectuate the intent of the Agreement.

**DULY AND REGULARLY ADOPTED** this 8<sup>th</sup> day of September, 2015.

**CITY OF ROHNERT PARK**

  
\_\_\_\_\_  
Amy O. Ahanotu, Mayor

**ATTEST:**

  
\_\_\_\_\_  
JoAnne M. Buergler, City Clerk

Attachment: Exhibit A

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



Exhibit A 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 )

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*(Space Above This Line for Recorder's Use Only)*

Exempt from recording fee per Gov. Code § 27383.

**PUBLIC FACILITIES FEE CREDIT AGREEMENT**

**BY AND BETWEEN THE CITY OF ROHNERT PARK**

**AND UNIVERSITY DISTRICT LLC AND VAST OAK PROPERTIES L.P.**

THIS PUBLIC FACILITIES FEE CREDIT AGREEMENT (the "Agreement") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_ 2015 (the "Effective Date") by and between UNIVERSITY DISTRICT LLC, a Delaware limited liability corporation ("University District"), VAST OAK PROPERTIES L.P., a California limited partnership ("Vast Oak"), and the CITY OF ROHNERT PARK, a California municipal corporation ("City"), with reference to the following facts and intentions. University District and Vast Oak are collectively referred to herein as "Developer."

***RECITALS***

A. On April 22, 2014, the City Council of the City of Rohnert Park adopted its Ordinance No. 878 approving an Amended and Restated Development Agreement with the Developer recorded in the Official Records of Sonoma County as Document No. 2014051817 (the "Development Agreement").

B. The Development Agreement requires that the Developer make payments towards the construction of the City's Eastside Trunk Sewer and Snyder Lane Widening Projects so that the City can construct these improvements to support the Project.

C. Both the Eastside Trunk Sewer and the Snyder Lane Widening Projects are included in the City's Public Facilities Finance Plan ("PFFP"). The Development Agreement provides that Developer is entitled to receive credits for Public Facilities Financing Plan fees, defined as "PFFP Credits" in Section 4.03(C) of the Development Agreement, for those improvements included in the



PFFP and constructed by Developer. The Development Agreement further provides that Developer shall not assign the PFFP Credits without the written authorization of City.

D. The Developer has submitted building plans and begun the building plan check process.

E. City and Developer desire to enter into an agreement regarding (1) Developer's prepayment of PFFP fees; (2) the transfer of the PFFP Credits to the developer of the Project, as defined in Section 2 below.

### ***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 are hereby incorporated into and form a material part of this Agreement.

2. Property Subject to Agreement. The property which is the subject of this Agreement ("Property") is located in the City of Rohnert Park, Sonoma County, California, and is described in Exhibit 1, attached hereto and incorporated by this reference. The Property is only a portion of the real property subject to the Development Agreement. The City has approved the development of residential subdivision on the Property (the "Project").

3. Public Facilities Fee Credit.

3.1. Source and Method of Credit. Subject to the limitations set forth in this Section 3, Developer, or any subsequent developer of the Property, shall receive PFFP Credits for payments received towards the construction of the Eastside Trunk Sewer Phase 3 and Snyder Lane Widening Projects in an amount not to exceed \$6,636,244, based upon the payment schedule included as Exhibit 2. Should Developer not complete payments in accordance with the schedule, City shall offer credits only in the amount received by City.

3.2 Implementation of Public Facilities Fee Credit. The PFFP Credits shall be applied against the Public Facilities Fees that would otherwise be applicable to the Project, as the result of construction on the Property. Developer shall be entitled to receive PFFP Credits at the time of issuance of building permits for construction on the Property. The City shall keep an accounting of the balance of PFFP Credits based upon the total prepayment received from Developer and the credits applied to building permits on the Property. The PFFP Credits shall run with the land and may be credited only for development of the Project on the Property, provided that Developer may allocate the use of the PFFP Credits among components of the Project. Developer may authorize the assignment of all or portions of the PFFP Credit balance in writing, with the consent of the City, provided that PFFP Credits may not be assigned outside the boundaries of the Property and the PFFP Credits are fully utilized on the development of the Property. Developer acknowledges and agrees that payment of the PFFP



Credits is limited to the development of the Property and not the entire real property described in the Development Agreement.

3.3 Expiration of Public Facilities Fee Credit. The Public Facilities Fee Credit reflects prepayment by the Developer of Public Facilities Fees that would otherwise be due at the time building permits are issued for structures on the Property. City's obligation to extend credits shall expire upon the available balance reaching \$0.00.

4. Community Facilities District; Intent to Reimburse. City and Developer acknowledge that the California Statewide Communities Development Authority has formed a Community Facilities District that includes the Property. Payment of Public Facilities Fees is potentially eligible for funding through a Community Facilities District and Developer's costs may be reimbursed with the proceeds of Community Facilities District bonds at some future date.

5. Breach of Agreement; Remedies.

5.1. 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 payment in accordance with the payment schedule.
- (2) Developer assigns the Agreement without the prior written consent of City.
- (3) Developer assigns all or a portion of the PFFP Credit balance without the prior written consent of the City.
- (4) 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.
- (5) Developer or Developer's contractors, subcontractors, agents, employees or assignees, fail to comply with any terms or conditions of this Agreement.

The City may serve written notice of breach and default upon Developer.

5.2. Remedies. Should the Developer breach this Agreement, City's remedy all be to hold all available credits for prepaid funds received under this Agreement for the benefit of the Property. 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.

6. Miscellaneous.

6.1 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.

6.2. 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.

6.3 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.

6.4. 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.

6.5. 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.

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

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

6.8. 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.

6.9. 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.

6.10. 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.

6.11. 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 7.6, in which event this Agreement shall remain binding upon Developer.

6.12. 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.



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

6.14. 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.

6.15. 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.

6.16. 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.

6.17. Joint and Several Liability. University District and Vast Oak agree to and shall be jointly and severally liable for all obligations of Developer under this Agreement.

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

*(signatures on following page)*



"CITY"

CITY OF ROHNERT PARK, a California  
municipal corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

City Manager

Per Resolution No. 2015-\_\_\_\_ adopted by the Rohnert Park  
City Council at its meeting of September 8, 2015.

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



"DEVELOPER"

University District LLC,

Dated: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Kevin Pohlson

Vice President

By: \_\_\_\_\_

Gregory Glenn

Chief Financial Officer

Vast Oak Properties L.P.

\_\_\_\_\_

By: \_\_\_\_\_

Craig R. Harrington

General Partner



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

) ss.

COUNTY OF SONOMA )

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*(here insert name and title of the officer)*

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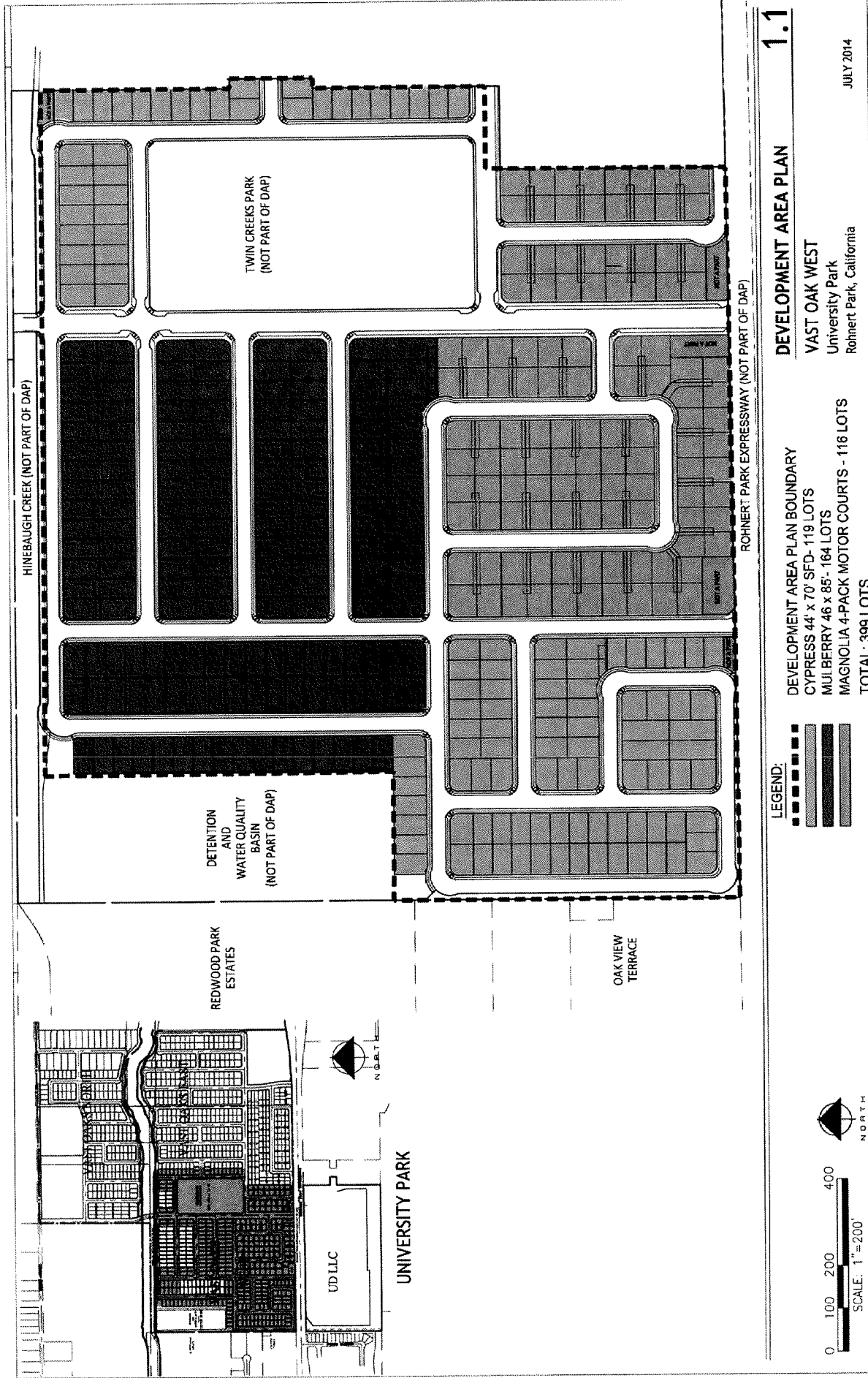
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
(Seal)



# EXHIBIT 1 TO AGREEMENT





# EXHIBIT 2 TO AGREEMENT

UD LLC & VAST OAK PFEP FUNDING OBLIGATIONS AND PROJECTIONS

UD YO PFEP 041715

PFEP FUNDING PROJECTIONS	FUNDING AMOUNT	5/20/15	6/19/15	7/20/15	8/18/15	9/17/15	10/16/15	TOTAL PAYMENTS
SNYDER BRIDGE AT COPELAND CREEK	\$465,119	\$0	\$531	\$464,588	\$0	\$0	\$0	\$465,119
ESTS - PH. 3 - NORTH REACH	\$2,999,469	\$2,000,000	\$999,469	\$0	\$0	\$0	\$0	\$2,999,469
SNYDER - SOUTHWEST BLVD. TO RPX	\$3,171,656	\$0	\$0	\$535,412	\$1,000,000	\$1,000,000	\$636,244	\$3,171,656
TOTAL VAST OAK WEST & CENTRAL	\$6,636,244	\$2,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$636,244	\$6,636,244