



City Clerk
311 Vernon Street
Roseville, California 95678-2649

January 28, 2011

West Roseville, LLC
1700 Eureka Road, Suite 140
Roseville, CA 95661

**RE: SECOND AMENDMENT OF FUNDING CONSTRUCTION AND
ACQUISITION AGREEMENT – WESTPARK COMMUNITY FACILITIES
DISTRICT NO. 1**

At the meeting of January 19, 2011 the City Council adopted a resolution authorizing the City Manager to execute the agreement for the above. The fully executed agreement is enclosed along with a certified copy of authorizing Resolution No. 11-37.

If you have any questions, please contact Financial Analyst Monty Hanks at (916) 774-5313.

SONIA OROZCO, CMC
CITY CLERK

By:

A handwritten signature in cursive script that reads "Judy Moore".

Judy Moore
Records Coordinator

Cc: Attorney
Finance
Monty Hanks/Finance

**SECOND AMENDMENT OF
FUNDING CONSTRUCTION AND ACQUISITION AGREEMENT
WESTPARK COMMUNITY FACILITIES DISTRICT NO. 1**

This Second Amendment to Funding Construction and Acquisition Agreement (the "Second Amendment") is entered into this 19th day of January, 2011, by and between the CITY OF ROSEVILLE, a California chartered municipal corporation ("City") and WEST ROSEVILLE, LLC, a California limited liability company ("Owner")(collectively, the "Parties"), with respect to that certain Funding Construction and Acquisition Agreement, dated August 24, 2005, entered into by and between City and PL Roseville, LLC ("PL Roseville") with respect to the Westpark Community Facilities District No. 1 in the City of Roseville (the "Agreement").

RECITALS

A. Capitalized terms not otherwise defined herein shall have the meaning ascribed in the Agreement.

B. As requested by Owner's predecessor in interest, PL Roseville, City commenced and completed proceedings for the establishment of a community facilities district as described in Recital E, and as required by section 1 of the Agreement.

C. In 2005, City issued bonds for the District in the aggregate principal amount of Fifty-Seven Million, Nine Hundred Five Thousand and No/100ths Dollars (\$57,905,000.00) ("Bonds"). PL Roseville subsequently requested that City issue, and the City issued in 2006, additional bonds for the District in the aggregate principal amount of Twenty-Two Million, Ninety-Five Thousand and No/100ths Dollars (\$22,095,000.00) to pay for the design and construction or acquisition of Public Facilities ("Additional Bonds"). The Public Facilities eligible to be funded by the Additional Bonds and the estimated costs thereof are generally described in Exhibit C as set forth in the Agreement.

C. On August 8, 2006, City and PL Roseville entered into the First Amendment to Funding Construction and Acquisition Agreement with respect to the Westpark Community Facilities District No. 1 (the "First Amendment").

D. In order for the Public Facilities set forth in Exhibit C to be fully funded and constructed in a timely manner to accommodate development of Phases 3 and 4 of the Property which is the subject of this Second Amendment (hereinafter, the "West Roseville Property"), the Parties desire to describe the

conditions under which the special taxes to be collected by City from the District shall be utilized to fund the Public Facilities.

AGREEMENT

1. City and Owner acknowledge the foregoing Recitals, all of which, together with the Recitals set forth in the Agreement and First Amendment, are incorporated by this reference as though set forth in full herein.

2. The third paragraph of the Agreement Section 5 is revised to read as follows:

Owner shall be reimbursed out of the proceeds of the sale of the Bonds or collection of special taxes in excess of the amount required for debt service and administrative costs or third party reimbursements, as set forth herein, for Owner's expenses incurred in designing those Public Facilities set forth in Exhibit C, hereto, including all applicable plan checking and other fees paid by Owner as provided above in this Section, subject to the City's determination of the amount to be so reimbursed pursuant to the terms hereof, and subject to the limitation that reimbursement in all cases is to be made from available bond proceeds or excess special taxes of the District and from no other source. Reimbursement for design and plan check services shall be made in one or more lump sum payments only after City has received and approved all invoices for such services associated with any particular Public Facility. All reimbursements from third parties for constructed Public Facilities that were financed through the CFD bonds and are oversized to serve such third parties shall be deposited with the District, to be reimbursed by the City from the District to the party constructing said Public Facilities, unless the constructing party has been previously reimbursed from the collection of special taxes in excess of the amount required for debt service and administrative costs, in which case those reimbursed amounts paid by third parties shall remain in the District for use by the City for Public Facilities related to the West Roseville Property.

3. Section 7 of the Agreement is revised to read as follows:

7. Payment; Cost Overruns; Shortfalls. The City and Owner agree that it is in their mutual best interest for Owner to construct the Public Facilities with the understanding that the City shall acquire those portion of the Public Facilities constructed by Owner as may be paid for with the proceeds of the sale of the

Bonds; interest earnings on the Reserve and Construction Funds; excess special taxes, if available, and as determined by City; and Owner contributions. All portions of the Public Facilities not acquired with the proceeds of the Bonds or with excess special taxes collected, shall nonetheless be constructed by the Owner, as required by the Project Approvals. Any Public Facilities not otherwise acquired with bond proceeds or collection of excess special taxes shall be eligible for reimbursement from excess special taxes collected for the purpose of providing reimbursement for these Public Facilities. This reimbursement obligation shall continue until such time as the taxing authority under the District has expired or is terminated or dissolved, unless the reimbursement amount has been fully paid to Owner before such expiration, termination, or dissolution of taxing authority. Any cost savings achieved in an element of any of the Public Facilities constructed in whole or in part with the proceeds of the sale of the Bonds shall be aggregated with all other such saving achieved throughout the District, and shall be used for any other element of the Public Facilities, as approved by the City. In the event the special tax revenues are insufficient to meet the reimbursement obligations, such shortfall shall be the responsibility of Owner.

City agrees to collect special taxes within the District as follows:

- a. Special taxes shall be levied by City as long as needed to service the principal and interest on the Bonds and to pay for the authorized Public Facilities set forth in Exhibit C not reimbursed with bond proceeds, including reimbursement to Owner for the costs of construction of the Public Facilities.
- b. City shall not unreasonably deny the maximum annual special tax escalating at 2% per year until such time as reimbursements to Owner for advance construction of Public Facilities as provided in this Agreement have been fully paid.
- c. Special taxes not used for debt service and City administrative costs shall be paid to Owner for any Public Facilities set forth in Exhibit C not reimbursed with bond proceeds (pay-as-you-go). The remaining balance of the costs of unreimbursed Public Facilities set forth in Exhibit C (and based on the budget estimates therein) that are constructed by Owner shall accrue interest equal to the 12-month Consumer Price Index for All Urban Consumers (CPI-U) average shown in the May report on the Bureau of Labor Statistics

website. If the 12-month CPI-U is negative, then no interest will be accrued.

- d. The amount of excess special tax proceeds, if any, shall be determined by City annually on July 1 based on the prior year's tax collections.

- 4. The second paragraph of Section 10 of the Agreement is revised to read as follows:

Upon determining the acquisition price for a completed Public Facility, segment or phase, the City shall promptly notify Owner in writing of such acquisition price. Upon presentation by Owner to the City of such documents, including lien releases, as the City shall require as to the completed Public Facility, segment or phase, the City shall, within ten (10) days thereafter, pay from the proceeds of the sale of the Bonds or from excess special taxes collected the amount of the acquisition price for the completed Public Facility, segment or phase, but in the case of a completed Public Facility less a retention of 150% of the value of "Punch List" work not completed. Upon payment and acceptance of the acquisition price for each completed Public Facility, segment or phase, Owner shall have no further claim for payment from the City with respect to the retentions. The City shall hold the retention amount on all Public Facilities acquired until the Punch List work is completed and accepted by the City.

- 5. The second paragraph of Section 14 of the Agreement is revised to read as follows:

Notwithstanding the provisions of this Section, the only sources of funds to be utilized by the City for the construction of any such Public Facilities shall be (i) the proceeds of the sale of the Bonds, or from excess special taxes collected, and, at City's discretion, (ii) the proceeds of applicable City development fees collected pursuant to the applicable codes, ordinances and policies of the City, (iii) proceeds from the sale of the bonds of another community facilities district or assessment district established over and including property in the City (iv) interest earnings on the reserve fund for the Bonds, to the extent such earnings are determined by the City to be available for construction of the Public Facilities, (v) the Owner's subdivision bond or bonds to the extent applicable, (vi) an other performance security that may have been provided by the Owner, and (vii) the Owner's and/or contractors'

performance bonds. To the extent that the proceeds of the sale of the Bonds and such other funds may be insufficient to pay for the construction of a Public Facility which will be constructed by the City pursuant to this Section, the City may either construct only those Public Facilities which can be constructed within the total of the amounts of the proceeds from the sale of the Bonds and such other funds which are available therefore, or the City may proceed to complete the Public Facilities and charge the Owner, the Owner's bond or any contractor's bond for the cost thereof.

6. Section 23 is hereby added to the Agreement to read as follows:

Representation and Warranty; Indemnification. Owner hereby represents and warrants that it is the lawful successor in interest to PL Roseville relative to the rights and obligations under the Agreement, as amended. Owner shall indemnify and hold City harmless relative to any assertion or claim of rights, obligations, or reimbursement made by or on account of PL Roseville arising from or on account of the Agreement, as amended.

7. Sections 2, 3, 4, 5, and 6 of this Second Amendment are intended to modify the terms of the Agreement (including the First Amendment) only as the Agreement affects the Property, and no other property subject to the Agreement.

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed as of the date first written above.

CITY OF ROSEVILLE,
a municipal corporation:

By: 
Ray Kerridge
City Manager

WEST ROSEVILLE, LLC
a California limited liability
company:

By: 
Its: Manager

ATTEST:



COUNCIL COMMUNICATION

3772

City Clerk Use Only

DATE: 12/21/2010

TITLE: **Second Amendment of Westpark CFD Funding, Construction, and Acquisition Agreement**

CONTACT: **Monty Hanks, Financial Analyst, 774-5313**

Meeting Date: 1/19/2011

SUMMARY RECOMMENDATION

Attached for City Council review and action is a resolution to approve the second amendment of the Westpark CFD Funding, Construction, and Acquisition Agreement.

BACKGROUND

On September 15, 2004 City Council approved the formation of the Westpark Community Facilities District No. 1, set the Special Tax Formula, and approved the issuance of \$57,905,000 special tax bonds including the Funding, Construction, and Acquisition Agreement between the City and PL Roseville, LLC. In 2006, PL Roseville subsequently requested that the City issue additional bonds for the district in the amount of \$22,095,000. The purpose of the CFD was to fund the construction of certain major on and off-site public improvements in the Westpark portion of the West Roseville Specific Plan (WRSP), primarily roads, water and wastewater facilities.

The City of Roseville has recorded development agreements on this property which required the establishment of a CFD to finance public infrastructure costs. The full bonds authorized by the Council for these purposes have been issued and the proceeds spent on improvement in Phases 1 and 2 of Westpark, however there is still public infrastructure required in Phases 3 and 4. Phases 3 and 4 contribute to the annual debt service for the Westpark CFD, yet have not benefited from the proceeds of the prior bond sales. In order for the Public Facilities to be fully funded and constructed in a timely manner to accommodate development of the property, the attached resolution is to amend the Funding, Construction, and Acquisition Agreement to be consistent with the change of ownership from PL Roseville, LLC, to West Roseville, LLC and to authorize the use of the pay-as-you-go program, provided for in the formation documents, to utilize the excess taxing capacity of the CFD to fund the remaining unfunded Public Facilities.

FISCAL IMPACT

The outstanding Special Tax Bonds are not an obligation of the City. The CFD will generate special taxes that will pay for debt service, administration costs, and construction of the Public Facilities.

ECONOMIC DEVELOPMENT/JOBS CREATED

Approving the second amendment of the Funding, Construction, and Acquisition may have an impact on local economic development or job creation. An estimated \$30 million dollars of costs remain to be completed.

Routing Approval:

MS ASD _____ ACM _____ BB ATTY _____

AGENDA ITEM

_____ JL