



## COUNCIL COMMUNICATION

# 4560

City Clerk Use Only

DATE: 4/3/2012

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

CONTACT: **Monty Hanks, Asst. Finance Director, 774-5313**

Meeting Date: 4/18/2012

### SUMMARY RECOMMENDATION

Staff recommends that the City Council approve the attached Resolution approving the Third amendment of the Westpark CFD Funding, Construction, and Acquisition Agreement and authorizing the City Manager to execute said 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.

On January 19, 2011, City Council approved the second amendment to the Funding, Construction, and Acquisition Agreement reflecting 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.


The proposed third amendment to the Funding, Construction and Acquisition Agreement for the Westpark CFD No.1 is intended to clarify the ownership of the reimbursements that may be available from future proceeds from the special tax levied in the district. Westpark intends to sell the land ahead of the public improvements being installed and at a land value to the buyer that accounts for Westpark receiving reimbursement for installation and dedication of public improvements by the buyer. The owner, West Roseville, LLC, desires to confirm that it is the sole party eligible to receive reimbursements for authorized facilities under the formation documents for the district provided that they follow the required procedures for reimbursement and files the required back-up to support any future payments from the district. The City makes no representation that any future funds will be available for repayment for these improvements and the risk of this future reimbursement is entirely on West Roseville.

Routing Approval:

 ASD
  ACM
  ATTY

4/18/12 Adopted Reso 12-128

AGENDA ITEM

# 6.10 

**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 third 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.

**ENVIRONMENTAL REVIEW**

The amendment of the Funding, Construction, and Acquisition Agreement do not constitute a 'project' under the California Environmental Quality Act (CEQA Guidelines 15378). Consequently, no CEQA documentation is required. NEPA does not apply.

Respectfully submitted,



Monty Hanks, Asst. Finance Director



Russ Branson, Asst. City Manager

**APPROVED:**



Ray Kerridge  
City Manager

RESOLUTION NO. 12-128

APPROVING A THIRD AMENDMENT TO AGREEMENT BETWEEN THE CITY OF ROSEVILLE AND WEST ROSEVILLE, LLC, AND AUTHORIZING THE CITY MANAGER TO EXECUTE IT ON BEHALF OF THE CITY OF ROSEVILLE

WHEREAS, a Third Amendment to Funding Construction and Acquisition Agreement regarding Westpark Community Facilities District No. 1, by and between the City of Roseville and West Roseville, LLC., has been reviewed by the Council;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Roseville that said amendment is approved and that the City Manager is authorized to execute it on behalf of the City of Roseville upon receipt and approval of all signed documents by the City Attorney.

PASSED AND ADOPTED by the Council of the City of Roseville this 18th day of April, 2012, by the following vote on roll call:

AYES COUNCILMEMBERS: Allard, Herman, Garcia, Rohan, Rocucci

NOES COUNCILMEMBERS: None

ABSENT COUNCILMEMBERS: None

  
MAYOR

ATTEST:

  
City Clerk

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

This Third Amendment to Funding Construction and Acquisition Agreement (the "Third Amendment") is entered into this 18<sup>th</sup> day of April, 2012, 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. On January 19, 2011, City and Owner entered into the Second Amendment to Funding Construction and Acquisition Agreement with respect to the Westpark Community Facilities District No. 1 (the "Second Amendment").

E. In order that West Roseville, LLC, and not a third party subsequent owner, may receive the reimbursements due it from third party subsequent owner(s) and any of their successors and assigns of any interest in any portion of the West Roseville Property ("Subsequent Owner") for constructed infrastructure funded by the District for the West Roseville Property, the parties desire to amend the Agreement to so provide for such reimbursement to West Roseville, LLC (with the result that a Subsequent Owner will not receive any funds from the CFD or City for payment or reimbursement of costs to construct and dedicate 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 and the Second 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:

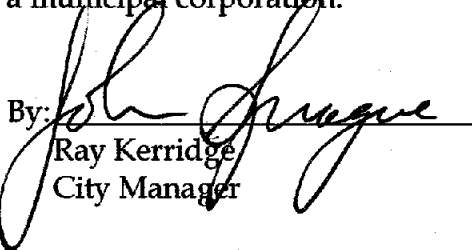
City and Owner agree that the reimbursements provided for herein for constructed Public Facilities financed through CFD bonds or reimbursed through pay-as-you-go proceeds are owned personally by West Roseville, LLC and do not run with the West Roseville Property to Subsequent Owner, unless West Roseville, LLC records against all applicable portions of the West Roseville Property and provides written notice to City that said reimbursements have been assigned by West Roseville, LLC to a named Subsequent Owner or other third party. West Roseville, LLC 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, or reimbursed through pay-as-you-go proceeds, as set forth herein, for West Roseville, LLC's expenses incurred in designing those Public Facilities set forth in Exhibit C, hereto, including all applicable plan checking and other fees paid by West Roseville, LLC 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 or pay-as-you-go proceeds and from no other source; provided, however, that (1) in order for West Roseville, LLC to be eligible for

or entitled to any reimbursement(s) under this Section 5, West Roseville, LLC shall be responsible for , and shall have the sole burden of, requiring and ensuring to the satisfaction of City that Subsequent Owner will fully comply with the Agreement, as amended (City may require, by way of example and not limitation, provision of insurance for City and payment of prevailing wages), (2) Westpark, LLC demonstrates to City's satisfaction recorded notice to Subsequent Owners of Westpark, LLC's exclusive reimbursement right, and (3) Westpark, LLC shall indemnify, defend, and hold City harmless with respect to any Subsequent Owner claiming payment or right of payment. Furthermore, 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 that City receives from third parties for constructed Public Facilities that were financed through the CFD bonds and are oversized to serve such third parties, or to be reimbursed from pay-as-you-go proceeds, shall be deposited with the District, to be reimbursed by the City from the District to West Roseville, LLC, unless West Roseville, LLC 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.

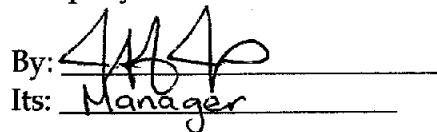
3. Section 2 of this Third Amendment is intended to modify the terms of the Agreement (including the First Amendment and the Second Amendment) only as the Agreement affects the West Roseville Property, and no other property subject to the Agreement.

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

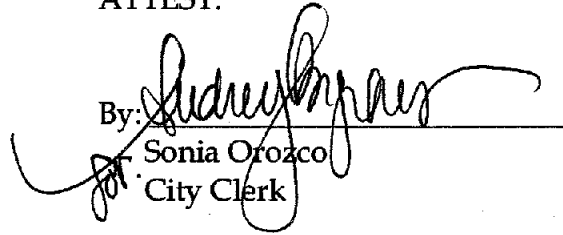
CITY OF ROSEVILLE,  
a municipal corporation:

By:   
Ray Kerridge  
City Manager

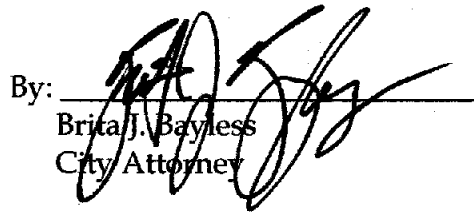
WEST ROSEVILLE, LLC  
a California limited liability  
company:

By:   
Its: Manager

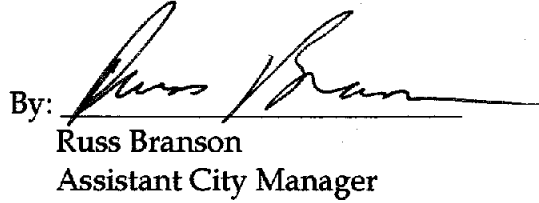
ATTEST:

By:   
Sonia Orozco  
City Clerk

APPROVED AS TO FORM:

By:   
Brita J. Bayless  
City Attorney

APPROVED AS TO SUBSTANCE:

By:   
Russ Branson  
Assistant City Manager



**City Clerk**  
311 Vernon Street  
Roseville, California 95678-2649

April 23, 2012

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

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

At the meeting of April 18, 2012 the City Council adopted a resolution authorizing the City Manager to execute the agreement for the above. A certified copy of the fully executed agreement is enclosed along with a certified copy of authorizing Resolution No. 12-128.

If you have any questions, please contact Assistant Finance Director 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**