

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 07/22/2010

ORIGINATING DEPARTMENT: Facilities Financing

SUBJECT: First Amendment to Neighborhood Park Site (NP1) Purchase Agreement (Gonzales Canyon Neighborhood Park)

COUNCIL DISTRICT(S): 1

CONTACT/PHONE NUMBER: Frank January/619 533-3699/MS-606F

REQUESTED ACTION:

Approve the Specific Actions (Resolutions).

STAFF RECOMMENDATION:

Approve Requested Actions

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

On September 8, 1998, the City of San Diego and Pardee Homes entered into a site purchase agreement for reimbursement for a 5 acre neighborhood park to be located in the north-central area of the community and north of Carmel Valley Road, which is identified in the Pacific Highlands Ranch Public Facilities Financing Plan as Project P-1. Subject to the terms of the Purchase Agreement, the City is to acquire the park site and reimburse Pardee Homes for grading and ½ width fronting street improvements and utilities that will serve the park site. Acquisition and site improvement costs totaling \$2,993,189.91 are identified in the First Amendment to the Purchase Agreement.

Approval of this amendment to the existing purchase agreement will allow for full reimbursement to Pardee Homes for the land acquisition and site improvements for Gonzales Canyon Neighborhood Park.

FISCAL CONSIDERATIONS:

With approval of this action, an amount up to \$2,993,189.91 will be reimbursed to Pardee Homes from the Pacific Highlands Ranch FBA Fund. These costs are incorporated into the budget for this project, and are included in the FY 2008 Pacific Highlands Ranch Public Facilities Financing Plan. The FBA funds have been collected and are available for reimbursement for this project.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Sections 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

Pacific Highlands Ranch – Subarea III NCFUA Neighborhood Park Site (NP1) Purchase Agreement was approved September 8, 1998, OO-18579-1. The Pacific Highlands Ranch Public

Facilities Financing Plan was updated in FY 2008 on October 18, 2007, R-303042 and includes the funding for this project.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Gonzales Canyon Neighborhood Park has been included in the Pacific Highlands Ranch Public Facilities Financing Plan as an FBA funded project. The Carmel Valley Planning Group (CVPG) approved the current Pacific Highlands Ranch Public Facilities Financing Plan on July 10, 2007.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are the Pacific Highlands Ranch Community, Carmel Valley Planning Group, and Pardee Homes.

Anderson, William

Originating Department

Deputy Chief/Chief Operating Officer

**FIRST AMENDMENT TO
NEIGHBORHOOD PARK SITE (NP1) PURCHASE
AGREEMENT
(GONZALES CANYON NEIGHBORHOOD PARK)**

This First Amendment to the Neighborhood Park Site (NP1) Purchase Agreement [Amendment] is made between the City of San Diego, a municipal corporation [Buyer], and Pardee Homes, a California corporation [Seller] [collectively, the "Parties"] for reimbursement for the land acquisition and rough grading improvements costs for Gonzales Canyon Neighborhood Park (formerly Neighborhood Park One), in accordance with the Pacific Highlands Ranch Facilities Financing Plan and Facilities Benefit Assessment [Financing Plan].

RECITALS

- A. On September 8, 1998, Seller¹ and Buyer entered into a purchase agreement for Project No. P-1, Gonzales Canyon Neighborhood Park (formerly Neighborhood Park One), which is on file in the Office of the City Clerk as Document No. OO-18579-1 [Purchase Agreement]. At the time of the Purchase Agreement, Seller owned real property consisting of 2,055 acres located within Subarea III in the North City Future Urbanizing Area in the City of San Diego, which was shown in Exhibit A to the Purchase Agreement [the Seller's Property].
- B. Under the Purchase Agreement, Seller is to sell the five-acre Gonzales Canyon Neighborhood Park site [Park Site] to Buyer, and subject to the terms of the Purchase Agreement, if Seller grades and improves the Park Site prior to the close of escrow, Buyer is to reimburse Seller for such improvements.
- C. Under the Purchase Agreement, the amount Buyer pays to Seller for the Park site [Purchase Price] is determined by (i) the market value of the Park Site as of the date the application was deemed complete for the filing of the tentative subdivision map [TM Filing Date] for portions of Seller's property that include the Park Site as established by an appraisal, (ii) the amount of all real property taxes allocable to the Park Site from the TM Filing Date to the close of escrow, (iii) any costs incurred by Seller in the maintenance of the Park Site from the TM Filing Date to the close of escrow, and (iv) the amount of all interest costs on loans covering Seller's Property allocable to the Park Site from the TM Filing Date to the close of escrow. The TM Filing Date is March 2, 2001.
- D. Buyer and Seller agree that the total Purchase Price to be paid to Seller for the Park Site is \$1,966,189.91 [Final Purchase Price]. Buyer and Seller agree that the Final Purchase Price under this Amendment consists of (i) \$1,650,000 for the market value of the Park Site as of March 2, 2001, (ii) \$11,016.69 for real property taxes from March 2, 2001 through the close of escrow, (iii) \$0 for maintenance costs incurred by Seller for the Park Site from March 2, 2001 through the close of escrow, and (iv) \$305,173.22 for interest

¹ The Purchase Agreement identifies the City and Pardee Construction Company, a California Corporation (Pardee Construction Company), as the Parties to that agreement. Seller represents and certifies that the proper entity is now Pardee Homes, a California Corporation (Pardee Homes) and that Pardee Construction Company now conducts business as Pardee Homes.

costs on loans covering Seller's Property allocable to the Park Site from March 2, 2001 to the close of escrow. The Final Purchase Price is also shown in **Attachment 1** attached to this Amendment.

- E. The Purchase Agreement sets forth the improvement costs for which Buyer is to provide reimbursement [Improvement Costs] if Seller complies with all other terms of the Purchase Agreement. Under the Purchase Agreement, the Improvement Costs include (i) one-half width of the total future street improvements limited to paving, sidewalks, curb and gutter, storm drains and storm drain facilities fronting the Park Site, (ii) up to one-half the cost of utility installation along the frontage of the Park Site necessary to provide direct service and benefit to the Park Site, (iii) grading costs limited to those required for construction of the Park Site and street improvements, (iv) all mitigation required by approvals granted for the Seller's property but limited to the Park Site and the abutting one-half width street improvements, and (v) mutually agreed upon administrative costs not to exceed fifteen percent of the total Improvement Costs. Buyer is also to pay interest on the Improvements Costs at the rate identified in the Financing Plan.
- F. Seller certifies and Buyer has verified that Seller has completed the rough grading improvements. Buyer and Seller agree that total Improvements Costs to be paid to Seller, including interest, shall not exceed \$1,027,000[Final Improvement Cost], as shown in **Attachment 1** attached to this Amendment.
- G. Since the date of the Purchase Agreement, the City Council has adopted a Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment, and in particular, on October 18, 2007, by Resolution No. R-303042, adopted the Financing Plan for Fiscal Year 2008 [Financing Plan]. The Financing Plan includes Project P-1, Gonzales Neighborhood Park, which is the acquisition and development of Neighborhood Park One anticipated in the Purchase Agreement. The Financing Plan currently allocates \$5,800,000 for Project P-1.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties, and for other good and valuable consideration, Seller and Buyer agree as follows:

- 1. The recitals set forth above are true and correct and are incorporated herein by reference.
- 2. Section 2, Purchase Price, of the Purchase Agreement, is amended as follows:

The Purchase Price shall consist of the following components: (i) the market value of the Park Site as of the date the application was deemed complete for the filing of the tentative subdivision map for portions of the Property which include the Park Site ("TM Filing Date") as established by appraisal pursuant to Section 4 below; plus (ii) the amount of all real property taxes allocable to the Park Site from the TM Filing Date to close of escrow; plus (iii) any costs incurred by the Seller in the maintenance of the Park Site from the TM Filing Date to the close of escrow; plus (iv) the amount of all interest costs on loans covering the Property and allocable to the Park Site from the TM Filing Date to close of escrow. Said total amount shall hereinafter be referred to as the "Purchase Price". The TM Filing Date is March 2, 2001.

3. Section 5, Construction Cost Reimbursement, of the Purchase Agreement, is amended as follows:

...Buyer will reimburse, upon close of escrow, the costs to Seller together with interest at the rate identified in the Financing Plan in effect at the time interest is accruing the PFFP Rate from the date of expenditure to the date of reimbursement of such infrastructure and grading specifically limited to the following...

4. Section 6(b), Legal Description, of the Purchase Agreement, is amended as follows:

~~Seller further reserves the right to amend the legal description of Property and the Park Site (Exhibits "C" and "D" attached hereto) as further specified in paragraph 17 hereto. The legal description for the Park Site is provided in Exhibit D-1 attached to this Amendment as Attachment 2. The legal description for the Property provided in Exhibit C in the Purchase Agreement is accurate as of the effective date of the Purchase Agreement.~~

5. Exhibit D in the Purchase Agreement is replaced with Exhibit D-1 attached to this Amendment as **Attachment 2**.

6. Section 7(a), Escrow and Closing, of the Purchase Agreement, is amended as follows:

Subject to possible extension as expressly provided in Subparagraph (b), below, pursuant to the PFFP acquisition and development schedule for the Park Site, the close of escrow shall be on or before ~~June 30, 2004~~ June 30, 2011 ("Closing Date").

7. Subsection (iii) of Section 9(a), Conditions to Sellers Obligations, of the Purchase Agreement, is amended as follows:

the Subarea Plan becoming effective and implementable no later than ~~November 4, 1998~~ July 1999.

8. Section 17, Legal Description Amendment, of the Purchase Agreement, is deleted.

9. Regarding notices to Buyer, Seller, and Escrow Holder, Section 20 of the Purchase Agreement, is amended as follows:

To Buyer: City of San Diego
202 C Street
San Diego, CA 92101
Attention: ~~City Manager~~ Chief Operating Officer
Facsimile No. (619) 236-6067-7080
Telephone No.: (619) 236-5941-7228

~~To Seller: Pardee Construction Company
10880 Wilshire Blvd., Suite 1900
Los Angeles, CA 90024
Attention: David Lyman
Facsimile No.: (310) 446-1292~~

Telephone No.: (310) 475-3525

With a Copy to: ~~Seltzer Caplan Wilkins & McMahon~~

~~750 B Street, Suite 2100~~

~~San Diego, CA 92101~~

Attention: ~~Thomas F. Steinke~~

Facsimile No.: ~~(619) 685-3100~~

Telephone No.: ~~(619) 685-3003~~

~~And an additional~~

Copy To Seller: ~~Pardee Homes Construction Company~~

~~110 West C Street, Suite 2200 6025 Edgewood Bend Court~~

~~San Diego, CA 92101 92130~~

Attention: ~~Michael Madigan Beth Fischer~~

Facsimile No.: ~~(619) 231-1765 (858) 794-2560~~

Telephone No.: ~~(619) 525-7245 (858) 794-2531~~

With a Copy to: Seltzer Caplan McMahon & Vitek

750 B Street, Suite 2100

San Diego, CA 92101

Attention: Thomas F. Steinke

Facsimile No.: (619) 702-6819

Telephone No.: (619) 685-3038

To Escrow Holder: ~~Chicago Title Company~~

~~925 701 "B" Street, Suite 760~~

~~San Diego, CA 92101~~

Attention: ~~Shelva Moim Renee Marshall~~

Facsimile No.: ~~(619) 544-6229 230-6368~~

Telephone No.: ~~(619) 544-6250 511-3415~~

10. The Parties agree that the Final Purchase Price to be paid to Seller for the Park Site is \$1,966,189.91.
11. The Parties agree that the Final Improvement Cost, including interest, to be paid to Seller shall not exceed \$1,027,000. Seller shall not be entitled to any additional funds under the Purchase Agreement or this Amendment.
12. The Final Purchase Price and the Final Improvement Cost shall not be further increased beyond the amount identified in this Amendment. Seller agrees that it may not request and is not entitled to any additional changes to the Final Purchase Price and/or the Final Improvement Cost.
13. Pursuant to Resolution No. _____, authorizing this Amendment, the Mayor of the City of San Diego is authorized to enter into an amendment to this Amendment to extend the Closing Date for an additional six (6) month period beyond the

Closing Date identified in this Amendment if the City determines such extension to be necessary.

14. The Parties agree that this Amendment represents the entire understanding of Seller and Buyer and affects only those portions of the Purchase Agreement specifically referenced in this Amendment. All other terms and conditions of the Purchase Agreement remain in full force and effect.
15. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Amendment is executed by the City of San Diego, acting by and through its Mayor, pursuant to Resolution No. R- _____, authorizing such execution, and by Seller.

This Amendment was approved as to form by the City Attorney this ____ of _____, 2010, and this date shall constitute the Effective Date of this Amendment.

THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: _____

By: _____
Jay Goldstone, Chief Operating Officer

Approved as to form:
JAN I. GOLDSMITH, City Attorney

Dated: _____

By: _____
Heidi K. Vonblum, Deputy City Attorney

PARDEE HOMES, a California Corporation
(formerly known as Pardee Construction Company)

Dated: 7/27/10

By: Beth Fischer
Beth Fischer, Vice-President

LAW OFFICES OF SELTZER CAPLAN
MCMAHON VITEK

Dated: 7/27/10

By: Thomas F. Steinke
Thomas Steinke, Attorneys for Pardee Homes

HKV
07/23/10
Or.Dept: Facilities Financing

ATTACHMENT 1

Purchase Price, Rough Grading and Improvement Costs
 Neighborhood Park Site (NP1) Purchase Agreement
 (Gonzales Canyon Neighborhood Park)

PURCHASE PRICE

ITEM	DESCRIPTION	ESTIMATED AMOUNT	NOTES
1	<u>Market Value of Land</u> Appraised Value of Park Site (03-02-2001)	\$1,650,000.00	
	Market Value	<u>\$1,650,000.00</u>	
2	<u>Property Taxes for Park Site</u>	\$11,016.69	
	Property Taxes	<u>\$11,016.69</u>	
3	<u>Maintenance of Park Site</u>	\$0.00	Note 1
	Maintenance	<u>\$0.00</u>	
4	<u>Interest on Loans (Park Property)</u>	\$305,173.22	
	Interest on Loans	<u>\$305,173.22</u>	
	TOTAL PURCHASE PRICE	\$1,966,189.91	

SITE IMPROVEMENT COSTS

ITEM	DESCRIPTION	ESTIMATED AMOUNT	NOTES
5	<u>Mass Grading & Storm Drain Improvements</u> Invoice #1	\$440,000	
	Mass Grading & Storm Drain Improvements	<u>\$440,000</u>	
6	<u>1/2 Width Street Improvements</u> Invoice #1	\$233,000	
	1/2 Width Street Improvements	<u>\$233,000</u>	
7	<u>Mitigation</u> Supplemental Invoice	\$100,000	
	Mitigation	<u>\$100,000</u>	
8	<u>Administrative Costs (6%)</u>	\$46,380	
	Administrative Costs (6%)	<u>\$46,380</u>	
9	<u>Interest on Site Improvement Costs</u>	\$207,620	
	Interest	<u>\$207,620</u>	
	TOTAL SITE IMPROVEMENTS	\$1,027,000	

SUMMARY

PURCHASE PRICE	\$1,966,189.91
IMPROVEMENTS	\$1,027,000.00
PROJECT COSTS	<u>\$2,993,189.91</u>

Note 1 Maintenance costs were submitted by Pardee and included in the site improvement costs reimbursement

ATTACHMENT 2

EXHIBIT "D-1"

Legal Description

**FIRST AMENDMENT TO
NEIGHBORHOOD PARK SITE (NP1) PURCHASE AGREEMENT
(GONZALES CANYON NEIGHBORHOOD PARK)**

Lot H of Map No. 14754-Pacific Highlands Ranch Unit No. 5, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County on March 19, 2004 as File No. 2004-0226766 of Official Records.

Assessor's Parcel No. 305-163-02