



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

CONSENT
May 26, 2009

Honorable Mayor and
Members of the City Council

**Title: Agreement/Supplemental Agreement: Promenade at Natomas/OPUS Fields
at the Natomas Baseball Complex (L19180000)**

Location/Council District: 3501 Fong Ranch Road / Council District 1

Recommendation: Adopt a **Resolution:** 1) authorizing the City Manager to execute an Amendment #2 to City Agreement No. 2006-0201 with Opus West, Inc. relating to the funding of construction of a regional youth baseball facility in South Natomas.

Contact: J.P. Tindell, Park Planning & Development Manager, 808-1955; Tim Hopper, Administrative Officer, 808-8173

Presenters: Not applicable

Department: Parks and Recreation

Division: Park Planning & Development Services

Organization No: 19001121

Description/Analysis

Issue: The public purpose of constructing a regional youth baseball facility in South Natomas ("Baseball Complex") will best be served by allowing OPUS West, Inc. ("OPUS") to meet its obligation to provide up to \$1 million to fund construction of the Baseball Complex through the payment of money, transfer of Natomas Basin Habitat Conservation Plan mitigation credits ("Mitigation Credits"), or a combination of the payment of money and the transfer of Mitigation Credits.

An amendment to City Agreement 2006-0201 is needed to allow OPUS to meet its funding obligation through the payment of money, transfer of Mitigation Credits, or a combination of the payment of money and the transfer of Mitigation Credits.

Policy Considerations: Amendment No. 2 to the MOU is consistent with the City's strategic plan to promote economic vitality by supporting the development and success of businesses in Sacramento.

Providing parks and recreation facilities is also consistent with the City's strategic plan to enhance liveability in Sacramento's neighborhoods by expanding park and recreation facilities throughout the City.

Committee/Commission Actions: None.

Environmental Considerations:

California Environmental Quality Act (CEQA): This report concerns administrative activities that will not have a significant effect on the environment, and does not constitute a "project" as defined by the CEQA [CEQA Guidelines Section 15061(b)(3)].

Sustainability Considerations: The OPUS Fields at the South Natomas Baseball complex project is consistent with Sustainability Master Plan goals to help improve the health of residents by providing access to recreation and wellness activities and a healthier urban environment.

Rationale for Recommendation: Amendment No. 2 will allow OPUS to meet its obligation to fund construction of the Baseball Complex through the payment of money, the transfer of HCP mitigation credits, or a combination of payment of money and the transfer of Mitigation Credits.

Financial Considerations: None.

Emerging Small Business Development (ESBD): No goods or services are being purchased as a result of this report.

Respectfully Submitted by:


over
JAMES L. COMBS
Director, Parks & Recreation

Recommendation Approved:


RAY KERRIDGE
City Manager

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Attachment 1

Background Information

OPUS West, Inc., ("OPUS") is developing a regional shopping center and office complex within the City known as Natomas Promenade. On September 28, 2004, the City Council adopted Resolution 2004-776 creating the Promenade at Natomas Planned Unit Development ("PUD"). PUD Condition 2.e. in City Agreement No. 2006-0201 provides, in part, that:

- e. Prior to the issuance of the first certificate of occupancy of the first building onsite, the applicant will enter into an agreement with the City that shall include the following:
 - v. The applicant shall either construct or provide funding for the construction of a Regional Youth Baseball facility in South Natomas up to a cost of \$1,000,000.

The City and OPUS entered into City Agreement No. 2006-0201 to satisfy the requirements of PUD Condition 2.e. Paragraph 4.e. of City Agreement No. 2006-0201 sets forth the terms by which OPUS shall satisfy its obligation under PUD Condition 2.e.v. The City and OPUS modified the terms by which OPUS shall satisfy its obligation under PUD Condition 2.e.v. through an amendment to City Agreement No. 2006-0201 ("Amendment No. 1") with an effective date of April 3, 2007.

The City and OPUS agree that the public purpose of constructing a regional youth baseball facility in South Natomas ("Baseball Complex") will best be served by further amending paragraph 4.e. of City Agreement No. 2006-0201 to allow OPUS to meet its obligation to provide up to \$1 million to fund construction of the Baseball Complex through the payment of money, transfer of mitigation acres of Natomas Basin Habitat Conservation Plan mitigation credits, or a combination of the payment of money and the transfer of the mitigation credits.

RESOLUTION NO. 2009-

Adopted by the Sacramento City Council

May 26, 2009

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT #2 TO CITY AGREEMENT NO. 2006-0201 WITH OPUS WEST, INC. RELATING TO THE FUNDING OF CONSTRUCTION OF A REGIONAL YOUTH BASEBALL FACILITY IN SOUTH NATOMAS.

BACKGROUND:

- A. City Agreement No. 2006-0201 by and between the City of Sacramento and OPUS West, Inc. relative to the Promenade at Natomas Planned Unit Development ("Agreement") was approved on February 28, 2006.
- B. Amendment No. 1 to the Agreement was approved on April 3, 2007.
- C. The public purpose of constructing a regional youth baseball facility in South Natomas ("Baseball Complex") will best be served by further amending paragraph 4.e. of City Agreement No. 2006-0201 to allow OPUS to meet its obligation to provide up to \$1 million to fund construction of the Baseball Complex through the payment of money, transfer of mitigation acres of Natomas Basin Habitat Conservation Plan mitigation credits, or a combination of the payment of money and the transfer of the mitigation credits.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager is authorized to execute an Amendment #2 to City Agreement No. 2006-0201 with Opus West, Inc. relating to the funding of construction of a regional youth baseball facility in South Natomas.

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Exhibit A - Amendment No. 2 to City Agreement No. 2006-0201

Exhibit A - Amendment No. 2 to City Agreement No. 2006-0201

**AMENDMENT No. 2 TO AGREEMENT
BY AND BETWEEN
THE CITY OF SACRAMENTO
AND
OPUS WEST, INC.
RELATIVE TO THE PROMENADE AT NATOMAS
PLANNED UNIT DEVELOPMENT ("PUD") (City Agreement No. 2006-0201)**

This Amendment No. 2 to the agreement by and between the City of Sacramento ("City") and OPUS West, Inc. ("Developer") relative to the Promenade at Natomas Planned Unit Development ("PUD") (City Agreement No. 2006-0201, the "Agreement") is effective as of May 26, 2009.

RECITALS

WHEREAS, Developer is developing a regional shopping center and office complex within the City known as Natomas Promenade; and

WHEREAS, on September 28, 2004, the City Council adopted Resolution 2004-776 creating the Promenade at Natomas Planned Unit Development ("PUD"); and

WHEREAS, PUD Condition 2.e. provides, in part, that:

- e. Prior to the issuance of the first certificate of occupancy of the first building onsite, the applicant will enter into an agreement with the City that shall include the following:
 - v. The applicant shall either construct or provide funding for the construction of a Regional Youth Baseball facility in South Natomas up to a cost of \$1,000,000; and

WHEREAS, the City and Developer entered into City Agreement No. 2006-0201 to satisfy the requirements of PUD Condition 2.e.; and

WHEREAS, paragraph 4.e. of City Agreement No. 2006-0201 sets forth the terms by which Developer shall satisfy its obligation under PUD Condition 2.e.v.; and

WHEREAS, the City and Developer modified the terms by which Developer shall satisfy its obligation under PUD Condition 2.e.v. through an amendment to City Agreement No. 2006-0201 ("Amendment No. 1") with an effective date of April 3, 2007;

WHEREAS, the City and Developer agree that the public purpose of constructing a regional youth baseball facility in South Natomas will best be served by further amending paragraph 4.e. of City Agreement No. 2006-0201 to allow Developer to meet its obligation to fund construction of the regional youth baseball facility through the payment of money, transfer of Natomas Basin Habitat Conservation Plan mitigation credits ("Mitigation Credits"), or a combination of the payment of money and the transfer of Mitigation Credits.

THEREFORE, the City and Developer, as parties to City Agreement No. 2006-0201, ("Agreement"), agree as follows:

1. Paragraph 4.e. of the Agreement is amended to read as follows:

"Upon written demand by the City, DEVELOPER shall immediately pay the City (or a third party designated by the City) the sum of One Million Dollars (\$1,000,000) to pay for the costs of constructing a regional youth baseball facility in South Natomas ("Baseball Facility"). The costs of constructing the Baseball Facility include, but are not limited to: (1) design costs; (2) regulatory compliance costs, such as permitting costs and the costs associated with complying with the requirements of the Natomas Basin Habitat Conservation Plan ("NBHCP"), its Implementing Agreement, and Chapter 18.40 of the Sacramento City Code relating to Habitat Conservation Fee For North and South Natomas Community Plan Areas; and, (3) the costs of labor and materials required to build the Baseball Facility. In the sole discretion of the City, DEVELOPER may satisfy its obligation to pay the sum of \$1,000,000 under this paragraph through the payment of money, transfer to the City of NBHCP mitigation credits ("Mitigation Credits"), or a combination of the payment of money and the transfer of Mitigation Credits to the City. For purposes of credit towards DEVELOPER's obligation under this paragraph, the value of Mitigation Credits shall be determined by adding the current land value of the Mitigation Credits (valued pursuant to the Economic & Planning Systems NBHCP Finance Model dated December 2008) and the non-land acquisition components of the Habitat Conservation Fee (i.e., Restoration and Enhancement, Administration and Operations and Maintenance, O+M Endowment, and Supplemental Endowment Funds) paid by DEVELOPER in August 2004 corresponding to the Mitigation Credits."

2. Developer warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. §§547(b)(3) and 548(a)(1)(B)(ii)(I) and will remain solvent following payment of its obligation under paragraph 4.e. of the Agreement.

3. The City and Developer warrant that, in evaluating whether to execute this Amendment No. 2, they (1) have intended that amending paragraph 4.e. to allow Developer to satisfy its obligation under paragraph 4.e. through the payment of money, transfer to the City of NBHCP mitigation credits Mitigation Credits, or a combination of the payment of money and the transfer of Mitigation Credits constitutes a contemporaneous exchange for new value given to Developer within the meaning of 11 U.S.C. §547(c)(1), and (ii) conclude that amending paragraph 4.e. as described above does, in fact, constitute such a contemporaneous exchange. Further, the City and

Developer warrant that amending paragraph 4.e. as described above is intended to and does, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which Developer was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

4. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and Developer shall perform all of the duties, obligations, and conditions required under the Agreement, as supplemented and modified by this amendment. This amendment may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed amendment.

Executed as of _____

City of Sacramento

OPUS West, Inc.

Ray Kerridge, City Manager

Name
Title

Attest:

City Clerk

Approved as to Form:



Michael T. Sparks,
Senior Deputy City Attorney