

RESOLUTION NO. 2010-701

Adopted by the Sacramento City Council

December 7, 2010

AGREEMENT: TERMINATING THE REIMBURSEMENT/CREDIT AGREEMENT FOR MEADOWS COMMUNITY PARK DEVELOPMENT (L19138000)

BACKGROUND

- A. Meadows Park is an 11.2-acre community park located at the end of Terracina Drive south of Del Paso Road in North Natomas.
- B. Phase I of the park was to be built as a turnkey park and developed by Pardee Homes.
- C. On September 3, 2002, Council approved Resolution No. 2002-591 authorizing the City Manager to issue park development fee credits upon the provision of unconditional, irrevocable stand-by letters of credit.
- D. The City Council approved the Meadows Park name and master plan in Resolution 2006-646.
- E. On January 30, 2007, City Council adopted Resolution No. 2007-051 which approved the Reimbursement/Credit Agreement (City Agreement No. 2007-065) for the turnkey design and construction of Meadows Park by Pardee Homes, Corp., established LW58 for associated City costs for the development of the park, accepted a payment of \$515,368 that was deposited into the Park Development Impact Fee (PIF) Fund 3204, and appropriated \$515,368 to the Meadows Park project (L19138000).
- F. The City Council approved releasing the letter of credit, extending the time to build the park, and retaining the cash payment for the Meadows Community Park Development on March 4, 2008, in Resolution No. 2008-125.
- G. Pardee Homes Corp., the original developer for this turnkey park project, has sold the property to 2008 Granite Bay Lands Fund, L.P. (GBLF) and GBLF would like to terminate the agreement as they do not desire to build a turnkey park.
- H. The City will return the original payment (\$515,368.00), less all City related charges (\$27,110.75), for a total amount to be returned to GBLF of \$488,257.25. No park credits were issued for any of the single-family or apartment building permits.

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

- Section 1. The City Manager, or City Manager's designee, is authorized to execute the Assignment of Deposit and Termination of Agreement Relating to Design and Construction of Park Improvements in North Natomas Meadows Park.
- Section 2. Payment to Granite Bay Lands Fund, L.P., is authorized in the amount of \$488,257.25, for Meadows Park (L19138000), which is the original cash deposit of \$515,368.00, less all City related charges to date of \$27,110.75.
- Section 3. The Reimbursement/Credit Agreement, City Agreement No. 2007-0065, for Meadows Park is terminated.

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Exhibit A: Termination Agreement

Adopted by the City of Sacramento City Council on December 7, 2010 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy, and Mayor Johnson.

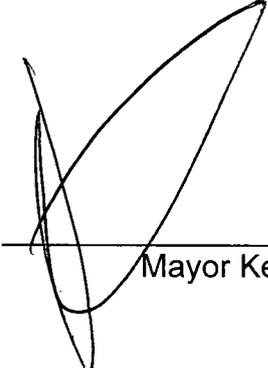
Noes: None.

Abstain: None.

Absent: None.

Attest:


Shirley Concolino, City Clerk



Mayor Kevin Johnson

**ASSIGNMENT OF DEPOSIT AND TERMINATION OF AGREEMENT
RELATING TO DESIGN AND CONSTRUCTION
OF PARK IMPROVEMENTS IN NORTH NATOMAS
MEADOWS PARK**

This Agreement assigning a deposit and terminating the Park Turnkey Agreement ("Termination Agreement") is entered into on _____, by and between the **CITY OF SACRAMENTO**, a charter municipal corporation ("City"), and **PARDEE HOMES CORP.**, a California Corporation ("PARDEE HOMES"), and **2008 GRANITE BAY LANDS FUND L.P.**, a Washington limited partnership ("GRANITE BAY LANDS") with respect to the following facts:

RECITALS

- A. On January 30, 2007, PARDEE HOMES and City entered into that certain REIMBURSEMENT/CREDIT AGREEMENT RELATING TO DESIGN AND CONSTRUCTION OF PARK IMPROVEMENTS IN NORTH NATOMAS, MEADOWS PARK, City Agreement number 2007-0065 ("Park Turnkey Agreement").
- B. On March 4, 2008, the City released a portion of the letter of credit, and the City retained payment for its costs incurred at that time for development of the park. See, City Resolution No. 2008-125.
- C. In September 2008, GRANITE BAY LANDS purchased certain real property from PARDEE HOMES including the real property that is the subject of the Park Turnkey Agreement. City was not asked to and has not pre-approved assignment of rights to reimbursement or credits, in accordance with Article 5 of the Park Trunkey Agreement. PARDEE HOMES nor GRANITE BAY LANDS request that the City approve assignment of the Park Turnkey Agreement. Instead, PARDEE HOMES and GRANITE BAY LANDS now request that GRANITE BAY LANDS take assignment of and the rights to the deposit of funds now held by the City which the City retained payment for its costs incurred at that time for development of the park, and then terminate the Park Turnkey Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, City and PARDEE HOMES and GRANITE BAY LANDS hereby agree as follows:

- (1) The foregoing recitals are true and correct, and are part of this Termination Agreement for all purposes.

(2) Subject to deduction of City's costs ("Costs"), a fully inclusive list of which is attached hereto as Schedule 1, GRANITE BAY LANDS takes assignment of, and the rights to, the deposit of funds now with the City ("Deposit") which the City retained for payment of the costs incurred by it at that time for development of the park, as provided for by City Resolution No. 2008-125, and pursuant to the Park Turnkey Agreement. City agrees to pay and deliver the Deposit to Granite Bay Lands as soon as practicable after execution of this Termination Agreement.

(3) The Park Turnkey Agreement is hereby terminated.

(4) PARDEE HOMES and GRANITE BAY LANDS agree to indemnify, defend and hold the City, including any person at any time serving as a member, official, director, officer, employee, volunteer, attorney, agent or consultant of the City, (any such person, including the City, is hereinafter referred to as an "Indemnified Party" and collectively as "Indemnified Parties") harmless from and against any and all claims, liabilities, fines, losses, damages, costs, expenses, including attorneys' fees and/or costs, litigation and court costs, amounts paid in settlement, and amounts paid to discharge any suits and judgments of any kind whatsoever, whether in contract, tort or strict liability, brought, claimed or rendered against any Indemnified Party (collectively, "Claims"), including, but not limited to, claims, liabilities, fines, losses, damages, costs, expenses, suits and judgments arising out of or in connection with this Termination Agreement. Such indemnification of the Indemnified Parties shall not include indemnification of any Indemnified Party for liabilities caused by the, active negligence, gross negligence or willful misconduct of such Indemnified Party.

CITY OF SACRAMENTO

By: _____
Gus Vina
Interim City Manager

APPROVED AS TO FORM:

Jeffrey C. Heeren
Supervising Deputy City Attorney

PARDEE HOMES, a California corporation

By: _____
Jon E. Lash
Executive Vice President/COO

2008 GRANITE BAY LANDS FUND, L.P. a Washington limited partnership
By: Granite Bay Development II, LLC, a Washington limited liability company, its General Partner

By: _____
Clay A. Loomis, Manager