

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** The Honorable City Council  
**FROM:** Steven Kueny, City Manager *SK*  
**DATE:** March 25, 2009 (CC Meeting of 4/01/09)  
**SUBJECT:** Consider Memorandum of Understanding (MOU) with Pardee Homes for Proposed Residential Development of Vacant School Site in Moorpark Highlands Specific Plan No. 2

**BACKGROUND**

On September 15, 1999, the City Council approved various actions including a General Plan Amendment, Zone Change and Development Agreement for a project generally referred to as Moorpark Highlands Specific Plan No. 2 upon the application of Morrison Homes. The approved project consisted of approximately 445 acres with 570 residential units (552 were subsequently approved), an approximate 7-acre park, and 22 acres reserved for a school site. The approved Moorpark Highlands project was subsequently acquired by Pardee Homes.

In April 2004, Moorpark Unified School District (MUSD) and Pardee Homes entered into a School Facilities Agreement which set forth the general terms for acquisition of the school site. On September 21, 2005, Community Facilities District (CFD) 2004-1 was established by the City and subsequently issued and sold \$38,030,000.00 in Bonds to fund certain fees and public facilities including the purchase of the school site by MUSD. MUSD and Pardee Homes jointly authorized an appraisal of the school site, and the resulting Appraisal Report concluded the market value of the school site to be \$15,850,000.00. (Please note that regardless of the actual market value of the school site, Pardee Homes had the legal ability to claim about \$33,000,000.00 from the CFD Project Improvement Fund. Other legitimate costs and fees could be substituted for a reduced cost of the school site.) In August 2007, MUSD and Pardee Homes entered into a Purchase and Sale Agreement for the school site. At some point in 2007-2008, MUSD indicated it was not planning to construct a school on the school site in the foreseeable future.

## **DISCUSSION**

In October 2008, MUSD indicated in a letter to the City (attached) its desire to terminate the Purchase and Sale Agreement. Pardee Homes disputes MUSD's ability to terminate the Purchase and Sale Agreement.

Pardee Homes and a City Council Ad Hoc Committee (Mayor Pro Tem Van Dam and Councilmember Millhouse) have met several times on the school site issue. The attached Memorandum of Understanding (MOU) is the result of those meetings. The MOU sets forth the parameters under which Pardee Homes will submit and the City will process and consider a residential development for the school site. The proposed development would be generally consistent with the current Specific Plan No. 2 and Development Agreement but requires amendments to the General Plan, Specific Plan, Zoning and Development Agreement to effectuate the proposed development. The maximum 225 residential units would exceed the current 712 maximum number of units by 65 units (552 currently approved, plus 225 proposed, less 712).

The MOU provisions are summarized as follows:

- A maximum of 225 additional units with at least 70 detached units.
- Five percent (5%) of approved additional units (with a minimum of 12) shall be provided to qualified low income buyers in a similar manner as provided for in the current Development Agreement and Affordable Housing Agreement. All such units would be provided for from the attached units.
- All of the additional units, except those required to be sold to qualified low income buyers, would be included in CFD 2004-1.
- Pardee Homes shall pay all applicable development fees and expand/improve the Mammoth Highlands Park by about .44 acres to allow connection to Ridgecrest Street and facilitate connection to Happy Camp Canyon Park and trails.
- Processing of the necessary amendments and related Residential Development Permit and Tentative Tract Map is expected to take six to nine (6-9) months. During this time, any legal action by Pardee Homes concerning the school site is suspended. Pardee Homes shall also continue to maintain the school site.
- Pardee Homes shall receive a total maximum \$27,000,000.00 reimbursement from CFD 2004-1. To date Pardee Homes has received \$16,943,673.41 from the Project Improvement Fund leaving a balance they can draw from of \$10,056,362.59. Pardee Homes shall be entitled to receive an additional \$4,000,000.00 from the Project Improvement Fund upon execution of the MOU.

When other costs related to the Bonds are factored in, there could be early redemption (and savings to the property owners) of about \$8,000,000.00. Please note there are administrative and legal costs as well as a three percent (3%) penalty associated with such early redemption.

- At the present time, 527 units (the 25 affordable units are exempt) are paying for \$38,030,000.00 CFD 2004-1 Bonds. With the proposal as contained in the MOU, another 213 units (the 12 affordable units would be exempt) would be included in CFD 2004-1 with an estimated \$8,000,000.00 reduction in the amount of the Bonds. This would result in about 43% overall average reduction in the CFD special taxes for the current 527 units. A summary of the Potential Bond Reduction is attached.
- If the project proceeds to approval, the changes to CFD 2004-1 could become effective prior to the end of the 5-year period in which Pardee Homes agreed to pay the CFD special taxes. In addition, it is intended that any buyers who prepaid the CFD special taxes would receive benefit of such reduction.

In summary, if the proposed MOU is approved and a residential project is approved for the school site, the following benefits would be realized:

- 1) The City and MUSD can avoid a costly legal battle with Pardee Homes;
- 2) It would add a project complementary to the existing built and planned residential communities of Moorpark Highlands;
- 3) It would spread future LMD assessments among 181 additional units (school site is currently assessed at 44 single-family equivalent units) for an approximate 20 percent (20%) decrease;
- 4) Decrease the CFD special taxes by about 43%; and
- 5) Provide for residential development of the school site much sooner (as early as 2011 depending on market conditions) than a school would be expected to be built.

### **STAFF RECOMMENDATION**

Approve the Memorandum of Understanding (MOU) subject to final language approval of the City Manager and City Attorney and authorize Mayor to sign.

#### **Attachments:**

- 1) Proposed MOU
- 2) October 9, 2008, MUSD Letter
- 3) Summary of Potential Bond Reduction

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("MOU") is entered into effective \_\_\_\_\_, 2009 ("Effective Date"), by and among the City of Moorpark, a municipal corporation ("City"), and Pardee Homes, a California corporation ("Developer"). This MOU is made and entered into with respect to the following recitals, and in consideration of the terms, covenants and conditions set forth below:

**1.0 RECITALS**

**1.1.** As described below, Developer is the owner of certain real property shown on Exhibit "A" to this MOU and hereinafter referred to as the "Property" or the "School Site".

**1.2.** On September 15, 1999, the Moorpark City Council certified the Moorpark Highlands Specific Plan No. 2 Final Environmental Impact Report ("the "EIR"), approved a Mitigation Monitoring Program, approved General Plan Amendment No. 95-2 ("GPA 95-2"), approved Moorpark Highlands Specific Plan No. 2 ("SP 95-2"), and approved Zone Change No. 95-4 ("ZC 95-4") for approximately 445 acres within the City (the "SP 95-2 Property"), and adopted Ordinance No. 263 approving a Development Agreement for the SP 95-2 Property (the "DA").

**1.3.** The Property is included within the SP 95-2 Property and is designated in SP 95-2 as a school site. As of this date, the Property has not been purchased or otherwise transferred to Moorpark Unified School District ("MUSD").

**1.4.** MUSD and Developer entered into a School Facilities Agreement dated April 27, 2004 ("School Facilities Agreement"), which includes general terms for acquisition of the School Site by MUSD. MUSD and Developer subsequently entered into a Purchase and Sale Agreement with respect to the School Site dated August 21, 2007 (the "Purchase Agreement").

**1.5.** Consistent with the definitions of the School Facilities Agreement, MUSD and Developer jointly authorized an appraisal of the School Site and subsequently received an Appraisal Report which concluded the market value of the School Site to be \$15,850,000.00.

**1.6.** On September 21, 2005, CFD 2004-1 was established by the Moorpark City Council pursuant to applicable provisions of state law. In conjunction with the formation of CFD 2004-1, the City, MUSD and Developer entered into a Joint Community Facilities Agreement dated September 13, 2005 (the "JCFA") authorizing the financing of the acquisition of the School Site and School Fees relating to the SP 95-2 Property ("School Facilities") through CFD 2004-1 and the City and Developer entered into a Funding and Acquisition Agreement dated September 7, 2005 (the "Funding Agreement") providing for the financing of certain City fees ("City Fees") and City facilities ("City Facilities"), in addition to the School Facilities, through CFD 2004-1. Subsequently, in 2006, CFD 2004-1 issued and sold \$38,030,000.00 in bonds (the "Bonds") to fund the City Fees, City Facilities and School Facilities, including purchase

of the School Site by MUSD. Pursuant to a Fiscal Agent Agreement by and between the City and The Bank of New York Trust Company, N.A., (the "Fiscal Agent") dated as of July 1, 2006 (the "Fiscal Agent Agreement") a portion of the proceeds of the Bonds were deposited in an "Improvement Fund" established and maintained by the Fiscal Agent. As of December 31, 2008, \$16,943,073.41 has been disbursed to Developer from the Improvement Fund pursuant to the Funding Agreement and Fiscal Agent Agreement.

1.7. In October 2008, MUSD indicated in a letter to the City its desire to terminate the Purchase and Sale Agreement with the Developer. Developer disputes MUSD's ability to terminate the Purchase Agreement.

1.8. This MOU is intended to outline the parties' agreements and mutual understandings with respect to the processing of Developer's development plans for the Property through the City and with respect to certain items relating to CFD 2004-1. This MOU shall also serve as the City's general plan pre-screening process.

NOW, THEREFORE, the parties agree to the following terms, covenants and conditions:

## **2.0 PARTIES TO THE MOU**

2.1. **City.** The City of Moorpark is a general law city, duly incorporated under the laws of the State of California.

2.2. **Developer.** Pardee Homes is a corporation duly organized and existing under the laws of the State of California and is authorized to conduct business in the State of California. The signatories to this MOU represent that the signatories are authorized to execute this MOU on behalf of Developer.

2.3. **No Third Party Beneficiaries.** There are no other parties to this MOU, express or implied, direct or indirect. The City and Developer acknowledge that it is not their intent to create any third party beneficiaries to this MOU.

2.4. **Assignment.** This MOU shall not be assignable in whole or in part by Developer unless the assignee executes an assignment and assumption agreement, in a form reasonably acceptable to the City, assuming all of Developer's rights and obligations hereunder. The City may terminate this MOU for any assignment in violation of this paragraph and Developer shall not be relieved of any of its obligations hereunder for any such assignment.

## **3.0 THE PROPERTY**

3.1. Developer is the owner of certain real property located in the County of Ventura, California, which is referred to as the SP-2 Property. The Property consists of approximately 22 acres (and is a portion of the "SP-2 Property"). One of the purposes of this MOU is to outline the process for developing the Property.

## **4.0 DEVELOPER AND CITY OBLIGATIONS**

**4.1. Deposit.** No later than close of business on the business day following execution of this MOU by both parties (which execution shall occur no later than close of business on May 4, 2009), Developer shall deposit the amount of \$50,000.00 ("Deposit") into the Project Trust Account to be established by the City. Pursuant to this MOU, the City may disburse funds from the Project Trust Account to defray costs incurred by the City in the course of administering and processing the "Project Entitlements" (defined in Section 5.1 below) and environmental documents, consistent with the tasks identified in the "Project Schedule" (defined in Section 4.5 below). Developer shall maintain and continue to replenish said Deposit with the City during the term of this MOU in the manner specified in Section 4.2, below. Upon termination of this MOU, if any portion of the Deposit remains, the City shall return the Deposit balance to Developer without interest thereon. Developer agrees that the City may use the Deposit to pay the City any amounts due the City pursuant to the terms of this MOU.

**4.2. City Costs.** Developer shall pay City for one hundred percent (100%) of any City costs related to administering, preparing, reviewing and processing the environmental documents and the Project Entitlements described in this MOU. City will send Developer a cost estimate and invoice for the additional costs anticipated for the next sixty (60) days, when eighty percent (80%) of the total Deposit, referenced in Section 4.1, above, has been expended. Developer shall then make a supplemental Deposit, based on the City's sixty (60) day cost estimate, within thirty (30) days of receipt of invoice. In no case shall the amount on deposit with the City to pay for City costs be less than \$20,000.00 to allow for payment of City costs in the event of termination of this MOU by Developer.

Consistent with the City's adopted Schedule of Land Development Preliminary Processing Fee Deposits, Developer shall pay cost plus fifteen percent (15%) for contract consultants, City Attorney and City Engineer staff work.

The City may redact the City Attorney's invoices in order to protect the disclosure of information protected by the attorney-client and/or attorney work product privileges.

**4.3. Application Fees.** Payment of City costs, as described in Section 4.2, above, satisfies the Developer's requirement to pay, and will incorporate and satisfy deposits for, the City's application fees associated with the processing of the environmental documents and Project Entitlements described in this MOU. Developer acknowledges that it is not exempt from any City processing costs.

**4.4. Suspend Processing.** The City shall have the right to suspend processing of the Project Entitlements and environmental documents in the event that Developer fails to maintain the Deposit as specified in this MOU.

**4.5. Project Schedule.** City agrees to process the Project Entitlements (and environmental documents) pursuant to the "Project Schedule," attached as Exhibit "B".

Both Developer and City acknowledge that time is of the essence in connection with the attached Project Schedule. Therefore, the Developer and City will diligently process the Project Entitlements and associated environmental documents, so that the processing/environmental review is completed in accordance with the attached Project Schedule. Developer may decide to stop or otherwise withdraw processing the Project Entitlements and environmental documents if Developer determines that the Project Schedule is not being met, that the proposed mitigation measures and conditions of approval associated with the Project Entitlements would render the proposed project economically infeasible, or that the proposed Development Agreement amendment would render the proposed project economically infeasible. If City is notified to stop processing the Project Entitlements and environmental documents, this MOU shall be terminated and the application for the Project Entitlements shall be considered withdrawn, subject to payment of "close-down" costs identified in Section 4.6, below.

The City agrees to take final action with respect to certification of the environmental documents and approval of the Project Entitlements in accordance with the Project Schedule, with the exception that for every one day that Developer is late in submitting payment of the Deposit to the City, or a check payment is not honored by the bank due to insufficient funds, the time period may be extended by two days. A payment will be considered late if a check for the full amount of an invoice is not submitted to the City within 30 calendar days following Developer's receipt of invoice, pursuant to payment and notification terms specified in this MOU. Receipt of invoice by mail initiates the 30-day time period for payment of each invoice. This "late payment" provision does not apply to the amount of any invoices contested or questioned by Developer, but not resolved by City staff or City Council, consistent with Section 4.2, above.

**4.6. Developer Processing.** Developer will respond promptly to any inquiries from City staff or its consultants concerning draft planning documents or tasks to be performed. Should this MOU be terminated as provided herein, Developer will remain liable for payment of sums previously committed or "close-down" costs, which cannot be reasonably avoided. Payment of such costs not covered by the Project Trust Account will be due and payable within 30 days of the date of written notice of termination. Developer's termination of this MOU shall be deemed a withdrawal of all applications for Project Entitlements.

**4.7. State Agency or Federal Studies, Permits or Approvals.** City and Developer agree to mutually cooperate in the preparation and processing, at the sole cost of the Developer, County of Ventura, state agency or federal studies, permits or approvals necessary to facilitate the timely implementation of the Project Entitlements.

**4.8. Conflict of Interest.** The Developer agrees not to hire or retain, for a period of one year after City Council final action on the Project Entitlements, any current City employee as of February 1, 2009, consultant retained by the City that worked on the Project Entitlements, or any employee of such consultant.

**4.9. Amended Development Agreement.** The parties agree that Developer may submit an application to amend the DA to include, but not be limited to, the following:

A. That any residential units approved for the Property shall pay the then applicable fees contained in Sections 6.4, 6.5, 6.6, 6.14, and 6.21 as well as the then applicable fee for the Los Angeles Avenue Area of Contribution (LA AOC);

B. That five percent (5%) of the number of residential units approved on the Property with a minimum of 12 (fractions shall be rounded up to the next highest whole number) shall be provided to qualified low income buyers. The residential units to be provided to qualified low income buyers shall be provided within the attached residential units proposed for the Property. In addition, up to three (3) of the qualified low income units may be provided in the residential project known as Waverly Place in SP-2 (RPD 2004-01 and Tract Map 5045). Implementation of this provision shall be consistent with the DA and existing Affordable Housing Agreement for SP-2;

C. Effective October 1, 2011, the \$150,000.00 payment contained in Section 5.30 and \$350,000.00 payment contained in Section 6.9 of the DA shall be increased in the same manner as the CPI Increase provided for in Section 6.6 of the DA; and

D. The Quimby requirement for all units above 570 in SP-2 shall be subject to credit for the land and improvement costs of the expansion of the park site described in Section 4.11.C below.

**4.10. Community Facilities District 2004-1.**

A. Developer agrees that if the Project Entitlements for a residential project consisting of no less than 225 units (of which a minimum of seventy (70) shall be single family detached units) are finally approved by City for the Property, (i) Pardee shall terminate the Purchase and Sale Agreement, (ii) Pardee shall limit its total reimbursement from the proceeds of Bonds of CFD 2004-01 to \$27,000,000.00, (iii) any funds in the Improvement Fund in excess of the amount required to fund such total reimbursement, less any CFD 2004-1 consultant costs associated with the redemption of Bonds and adding residential units approved in the Project Entitlements to CFD 2004-01, shall be applied to redeem a portion of the Bonds, consistent with applicable provisions of State and Federal laws and regulations. As a result of such redemption, the Special Taxes for Facilities shall be decreased in accordance with the Rate and Method (defined below). For purposes of this MOU, the Project Entitlements shall be deemed to be "finally approved" when all related resolutions and ordinances have been adopted by the City Council and all applicable periods for a legal challenge of, or referendum on, the Project Entitlements have passed without the filing of a legal challenge or referendum petition. Developer may terminate this MOU, if a legal challenge of, or referendum on the Project Entitlements, is filed.

B. To the extent permitted by applicable law, City agrees to initiate action and Developer agrees to cooperate in such action to include any residential units (except those designated to be sold to low income buyers pursuant to Section 4.9.B. of this Agreement) approved for development on the Property in CFD 2004-01 for purposes of levying the Special Tax for Facilities and the Special Tax for Services described in the Rate and Method of Apportionment attached as Exhibit "B" to City Council Resolution No. 2004-2383 (the "Rate and Method"). If such residential units are made subject to such special taxes, City agrees that funds in the Improvement Fund may be disbursed to fund City Fees applicable to such residential units in accordance with the Funding Agreement, upon Developer's submittal of a Payment Request, and Developer may receive a total reimbursement from the Improvement Fund in an amount of \$27,000,000.00 consistent with 4.10.A.(ii), above.

C. City agrees to continue to process and pay from the Project Improvement Fund all Payment Requests submitted by Developer pursuant to, and in accordance with, the Funding Agreement prior to and following execution of this MOU in an additional amount not to exceed \$4,000,000.00; provided, however, prior to the earlier of termination of this MOU or the date the Project Entitlements are finally approved, City and CFD 2004-1 shall not be required to pay Payment Requests submitted for acquisition of the School Site.

D. City agrees to amend the Fiscal Agent Agreement, within thirty (30) days following the effective date of an amended DA executed by both parties, to provide for the deposit in the Special Tax Fund of all earnings on the investment of funds in the Improvement Fund and all earnings in the investment of funds in the Reserve Fund in excess of the Reserve Requirement after the effective date of the amended DA to be used to pay debt service on the Bonds.

#### **4.11 Miscellaneous.**

A. During the term of this MOU, Developer shall pay and keep current all taxes and assessments on all its properties within the SP 95-2 Property.

B. Consistent with Project Schedule, Developer shall submit a completed application for residential projects on the Property consisting of no less than 160 and no more than 225 attached and detached residential units. The attached residential units shall be generally consistent with the residential project known as Waverly Place in SP-2 (RPD 2004-01 and Tract Map 5045).

C. Developer acknowledges that any approved residential project on the Property shall be conditioned to include an expansion of the park site in SP-2 of approximately 0.44 acres (approximately 40 feet wide by 475 feet long exclusive of any slope easements) to serve primarily as an access trail from the park site to a point near the terminus of Ridgecrest Drive and the SR-23 Alternate at the City boundary with Happy Camp Canyon Regional Park (the "Park Site Expansion"). Developer further acknowledges it shall be conditioned to construct landscaping, concrete walkway,

grading and bollard-type lighting in the Park Site Expansion consistent with City approved plans and specifications.

D. Developer agrees to suspend any legal action against City pertaining to the School Site and CFD 2004-1 during the term of this MOU. City agrees that the limitations period for bringing any such legal action against City shall be tolled during the term of this MOU. Developer also agrees to suspend any legal action against MUSD pertaining to the School Site and during the term of this MOU, provided Developer and MUSD enter into an agreement tolling all applicable limitations period for such actions for the same term.

E. Developer further agrees that no additional public improvements including but not limited to fees and as described in CFD 2004-01 shall be eligible for reimbursement from CFD 2004-01 resulting from residential development of the Property.

F. City agrees that any additional public improvements off-site of SP-95-2 conditioned as part of the Project Entitlements shall be funded by the LA AOC or other funds as determined by City at its sole discretion.

## **5.0 PROJECT ENTITLEMENTS**

**5.1. Entitlements.** The project applications for entitlements, permits and approvals shall be processed concurrently, shall be referred to collectively as "Project Entitlements" and shall include the following:

A. Amendments to the General Plan Land Use Element, SP-2 Specific Plan and related Zoning, and the DA.

B. Residential Planned Development Permit and Tentative Tract Map.

**5.2. Environmental Processing/Review.** The Project Entitlements described in this MOU will require further environmental documentation pursuant to the requirements of CEQA (Pub.Res.Code §§21000 et seq.) and the state CEQA Guidelines (14 Cal.Code Regs §§15000 et seq.). The City will: (a) undertake the preparation, consideration and possible certification of all required environmental documents in the manner required by law; (b) follow all legally prescribed proceedings for the processing of the Project Entitlements, including public notices and hearings; and (c) exercise its independent judgment relative to all Project Entitlements and environmental documents.

**5.3. No Obligation to Certify/Approve.** City agrees to take final action with respect to certification of the environmental documents and approval of the Project Entitlements in accordance with the Project Schedule. Developer understands and agrees that in no event or circumstance shall this MOU be deemed to require City approval/certification of the environmental document or approval of the Project Entitlements described in this MOU. City retains the full discretion authorized by law in reviewing and considering any and all entitlements sought by Developer for the

Property. Any denial or rejection of any entitlement by the City for the development of the Property shall not constitute a default of the MOU. Further, Developer shall also seek a refund of monies paid to the City for project processing if the environmental document is not approved/certified, or if the Project Entitlements are not approved by the required decision maker, whether Community Development Director, Planning Commission, and/or City Council.

**5.4. Planning Consultant.** Subject to Developer's payment obligations described above, both Developer and the City agree that a planning consultant, subject to advance consultation with Developer, may be retained to provide planning and processing services for the Project Entitlements. The City will execute a professional services agreement with the designated planning consultant for the planning and processing services required for the Project Entitlements described in this MOU.

**5.5. Developer Participation.** City agrees to allow Developer, through its representatives and consultants, to participate in meetings and discussions with City staff and retained consultants regarding the preparation of the Project Entitlement documents, and the environmental documentation associated with the Project Entitlements, including preparation of draft documents for City staff review and consideration, and the review and revision of draft environmental documents prepared by the City's consultants. The City retains its full discretion to independently meet with the City's consultants, and to independently review all project and environmental documentation.

Developer shall receive from the City copies of all completed environmental documents prepared by the environmental consultant for the Project Entitlements described in this MOU. City staff and Developer will work cooperatively regarding the preparation of draft and final environmental documents and Project Entitlements, including the opportunity of Developer to review and comment on draft reports prior to distribution. The City retains its full discretion on the final drafts of all documents released to the public.

**5.6. Senior Management.** If requested by Developer, City agrees to schedule and participate in a meeting or conference call between Developer and Deputy City Manager at least once every two (2) weeks to review project progress and Project Schedule, and to resolve outstanding issues, if any.

## **6.0 TERM OF AGREEMENT**

**6.1. Effective Date.** This MOU shall become operative on the Effective Date identified above and, unless earlier terminated pursuant to the terms of this MOU, shall continue in effect until action on the Project Entitlements and environmental documents are finally approved and all actions required by Section 4.10.A. have been taken, except that the indemnification provision of Sections 7.7 and 7.12 shall survive termination or expiration of this MOU for any claims or causes of action arising during the term of this MOU. The term of this MOU may be extended by the further written agreement of the parties.

## 7.0 OTHER PROVISIONS

**7.1. Integrated Agreement.** This MOU constitutes the final agreement between the parties and supersedes all prior oral or written negotiations, discussions, communications, promises, covenants, understandings or representations between the City, and Developer, and Developer's predecessors in interest, regarding the subject of this MOU other than the DA, Funding Agreement, JCFA and any other written agreements between the parties related to the SP 95-2 Property. Notwithstanding the foregoing, the parties acknowledge that the provisions of any other valid mutual written agreements shall remain in full force and effect.

**7.2. Construction/Interpretation.** The parties to this MOU acknowledge that they have been represented by counsel in respect of the negotiation and drafting of this MOU, and that no terms, covenant or condition of this MOU shall be construed or interpreted by reference to the extent to which either party participated in the drafting of the MOU, or any part thereof.

**7.3. No Waiver of Any Default.** The parties to this MOU do not waive any default by a party to the MOU by virtue of failing to take prompt action with respect to such default.

**7.4. Attorneys' Fees.** In any action or proceeding arising under this MOU, or to enforce the provisions of this MOU, each party shall bear its own attorneys' fees and costs.

**7.5. Interpretation and Governing Law.** This MOU and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

**7.6. Force Majeure.** Developer agrees that the City shall not be deemed to be in default where failure or delay in performance of any of the City's obligations under this MOU to process the Project Entitlements is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the City's control, government regulations (including those federal and state agencies with environmental permitting authority), or court actions (such as restraining orders or injunctions). If any such events shall occur, the terms of this MOU and the time for performance by the City of its obligations hereunder shall be extended by the period of time that such events prevented such performance provided that the term of this MOU shall not be extended under any circumstances for more than three (3) months.

**7.7. Hold Harmless.** Developer shall hold harmless, indemnify and defend the City and its officers, employees, servants, agents and independent contractors who serve in the role of City Manager, Assistant City Manager, Assistant to City Manager/City Clerk, Director of Community Development, City Engineer or City Attorney ("Indemnitees") from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including but not limited to death or injury to any person and

injury to any property, resulting from misconduct, negligent acts, errors or omissions of Developer or any of its officers, employees or agents in the performance of this Agreement asserted by a third party ("Third Party Litigation"), except such damage as is caused by the sole negligence of the City. Developer also agrees to hold harmless, indemnify and defend Indemnitees from any Third Party Litigation (as contemplated in Section 7.12), including, but not limited to, litigation challenging this MOU, any of the Project Entitlements, environmental document approval/certification for the Project Entitlements and the processing and approvals thereof.

**7.8. Notices.** Any notice called for in this MOU shall be by hand-delivery, overnight courier service, or registered or certified mail as follows:

To City and CFD 2004-1:           City of Moorpark  
799 Moorpark Avenue  
Moorpark, CA 93021  
Attn: Steven Kueny, City Manager

With a Copy to:                   Burke, Williams & Sorensen  
444 South Flower Street, Suite 2400  
Los Angeles, CA 90071  
Attn: Joseph M. Montes, Esq.

To Developer:                   Pardee Homes

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10880 Wilshire Boulevard, Suite 1900  
Los Angeles, CA 90024  
Attn: General Counsel

With a copy to:                   Hewitt & O'Neil LLP  
19900 MacArthur Blvd., Suite 1050  
Irvine, CA 92612  
Attn: John Yeager, Esq.

Any such notices sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage pre-paid. Notices delivered by overnight service shall be deemed to have been given twenty-four (24) hours after delivery of the same, charges pre-paid to the U.S. Postal Service or private courier. Any notice or other document sent by any other manner shall be effective only upon actual receipt thereof.

**7.9. Further Actions and Instruments.** Each party shall cooperate with and provide reasonable assistance to the others to the extent contemplated hereunder in the performance of all obligations under this MOU and the satisfaction of the conditions of this MOU. Upon the request of any party at any time, the other parties shall promptly

execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this MOU to carry out the intent and to fulfill the provisions of this MOU or to evidence or consummate the transactions contemplated by this MOU.

**7.10. Amendments in Writing/Cooperation.** This MOU may be amended or modified, but only in writing, duly executed by all parties to this MOU. The parties shall cooperate in good faith with respect to any amendment or modification proposed in order to clarify the intent and application of this MOU, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters.

**7.11. Time of Essence.** Time is of the essence in the performance of the provisions of this MOU.

**7.12. Third Party Litigation.** In the event of the occurrence of Third Party Litigation, the term of this MOU shall be extended for the period of the pendency of the Third Party Litigation or until such time as either the City or Developer (irrespective of who is named in the Third Party Litigation) decide it is no longer in its best interest to defend against the Third Party Litigation at which time written notice shall be provided terminating this MOU.

**7.13. Venue.** This MOU is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions or covenants referred to herein shall be filed in the applicable court in Ventura County, California, and Developer agrees to not seek transfer of venue.

**7.14. Exclusive Remedy.** The parties hereto understand and agree that other than actions to recover fees owed pursuant to Sections 4.1, 4.2, 7.7, and/or 7.12 of this MOU, that the exclusive remedy for breach of the MOU by any party shall be termination of this MOU by the non-breaching party.

**7.15. MOU Executed in Counterparts.** So that each of the parties may have an executed original of this MOU, this MOU may be executed in counterparts, all of which shall constitute a single MOU.

**7.16. Exhibits.** All exhibits attached to this MOU and referred to herein are incorporated by this reference and made a part of this MOU. The exhibits identified above are as follows:

- Exhibit A     The Property
- Exhibit B     Project Schedule

**7.17 Recordation.** This MOU may be recorded with the Ventura County Recorder's Office by the City.

***[Signature Page Follows]***

IN WITNESS WHEREOF, the parties to this MOU have executed the MOU on the day and year first set forth above.

CITY OF MOORPARK:

\_\_\_\_\_  
Janice S. Parvin, Mayor

ATTEST:

\_\_\_\_\_  
Deborah S. Traffenstedt, City Clerk

City of Moorpark  
Community Facilities District  
No. 2004-1 (Moorpark Highlands):

By: \_\_\_\_\_  
Janice S. Parvin, Mayor

DEVELOPER:

PARDEE HOMES, a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**[PROPERTY DESCRIPTION]**

**EXHIBIT B**

**PROJECT SCHEDULE**

**Pardee Homes**

**GPA, SPA, TTM Project Estimated Time Line to Approval  
(No EIR, Mitigated Neg. Dec.)**

Approval of Pardee Processing Agreement	April 1 2009
Submittal of Applications and Plans	May 4*
Review of Applications and Plans for Completeness	May 4- 22
Letter of Incompleteness	May 22
Revision to Plans by Applicant	May 25 – June 12
Submittal of Revised Plans	June 12
Review and Acceptance of Revised Plans	June 15 – 26
<b>SUMMER RECESS JULY/AUGUST</b>	
Preparation of Draft Development Agreement	June 29 – July 10
Review of Draft Development Agreement by City Manager	July 13 – 24
Negotiation of Draft Development Agreement by Ad Hoc Committee and Recommendation to Council	August 5 and 19
Preparation of Council Report on Draft Development Agreement	August 20 – August 21
City Council Hearing on Ad Hoc Committee Recommendation	September 2
Preparation of Planning Commission Agenda Report	September 3 - 18
Advertisement of Public Hearing for Planning Commission	September 11
Planning Commission Public Hearing on Applications	September 22
Preparation of City Council Agenda Report	September 26 - October 9
Advertisement of Public Hearing for City Council	October 9
City Council Public Hearing on Applications	October 21
Second Reading of DA Ordinance	November 4

\* Developer may submit applications and plans as much as thirty (30) days after this date without extending the date for the second reading of the DA Ordinance



**Summary of Potential Bond Reduction**

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\$ 38,030,000.00	Principal Amount of Bonds Issued
\$ (1,220,000.00)	Estimated Cost of Issuance
\$ 36,810,000.00	<b>Net</b>
\$ (2,472,615.00)	Deposit to Bond Reserve Fund
\$ (270,547.00)	Deposit to Bond Capital Interest Account
\$ 34,066,838.00	<b>Net to Project Improvement Fund</b>
\$ (1,000,000.00)	Flood Control Improvements
\$ (16,943,673.00)	Paid to Pardee from Project Improvement Fund
\$ 1,925,844.00	Interest Earned on Project Improvement Fund
\$ 18,049,009.00	<b>Estimated Current Balance in Project Improvement Fund</b>
\$ (10,056,327.00)	Balance to be Paid to Pardee from Project Improvement Fund
\$ 7,992,682.00	<b>Estimated Balance (1)</b>

(1) Additional interest earnings are expected to offset some of the administrative and legal costs and 3% early redemption penalty.