



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Albert Balagso

SUBJECT: SEE BELOW

DATE: 01-12-09

Approved

Date

1/20/09

COUNCIL DISTRICT: 5

SNI AREA: N/A

**SUBJECT: SECOND AMENDMENT TO PARKLAND AGREEMENT FOR
TENTATIVE MAP NO. PT04-015.**

RECOMMENDATIONS

1. Approve Second Amendment to Turnkey Parkland Agreement for Tentative Map No. PT04-125 between City and DKB Homes, LLC to defer completion of the park improvements relating to the San Antonio Tot Lot from December 30, 2008 to June 30, 2009.
2. Adopt a resolution authorizing the City Manager to negotiate and execute a Third Amendment to the Turnkey Parkland Agreement for Tentative Map No. PT04-125 between City and DKB Homes LLC to defer completion of the park improvements relating to the San Antonio Tot Lot from June 30, 2009 to December 30, 2009 in the event that additional time is required to complete the park improvements.

OUTCOME

Approval of the Second Amendment will allow the completion of design and construction documents and allow completion of the San Antonio Tot Lot by June 30, 2009.

BACKGROUND

The Developer, DKB Homes, LLC, has proposed and received approval to develop 19 single-family attached units on a 2.3 gross acre site located at 1650 East San Antonio Street, opposite 34th Street. To fulfill its parkland obligation for PT04-125, the Developer has proposed dedication of a 0.03-acre neighborhood park site and to develop the site as a turnkey park

project. The proposed park elements consist of a children's play area, a small picnic area, trash receptacles, drinking fountain, security lighting, artificial turf and low-maintenance landscaping, and concrete walkways as shown in Attachment A.

The final housing project phases have been completed and occupancy has been ongoing.

ANALYSIS

On January 11, 2008, the City and Developer entered into an agreement entitled "Parkland Agreement for Tentative Map No. PT04-125 between City of San Jose and DKB Homes, LLC (Chapter 19.38 of SJMC)" ("Agreement") under which Developer agreed to satisfy its Parkland Dedication Obligation relating to Tentative Map No. PT04-125, Final Tract Map No. 9705. On June 17, 2008, City and Developer entered into a "First Amendment to Parkland Agreement for Tentative Map No. PT04-125 between City of San Jose and DKB Homes, LLC" to extend the completion date for the Park Improvements from June 30, 2008 to December 30, 2008. There have been a number of delays in the preparation and review period for construction documents for this turnkey project to date, and the park improvements were not completed by December 30, 2008. Preliminary submittals for the construction project are now being reviewed by City Public Works staff. Therefore, staff is recommending an extension to the Turnkey Parkland Agreement of an additional six (6) months until June 30, 2009. Staff is also requesting authority for the City Manager to negotiate and execute a third amendment to the Agreement to extend the deadline from June 30, 2009 to December 30, 2009 in the event that additional time is required to complete the construction of the park.

EVALUATION AND FOLLOW-UP

Approval of this Second Amended Agreement will allow construction of the San Antonio Tot Lot Turnkey project to continue through the following fiscal year.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although the proposal does not meet the criteria as listed above, community outreach for the project was conducted as outlined below.

The San Antonio turnkey park project was presented to the local community at two neighborhood meetings on September 26, 2006, and again on October 27, 2006 to specifically discuss play lot design options. The first meeting took place at the Gateway East Neighborhood Advisory Council meeting with approximately 40 residents in attendance. Major issues discussed at the meeting included after hours use in the park and security/enforcement issues. City staff responded to these concerns with information on park hours and regulations and by reminding residents that the San Jose Police Department has law enforcement jurisdiction in all City parks and should be contacted in the event unlawful activities occur on the park site. Residents also asked that staff and the Developer conduct a second meeting to involve neighborhood children in the design of the play lot in the proposed park. Staff met again with resident children and their parents on October 27, 2006 to discuss play lot equipment types and possible colors for the equipment. Staff was able to integrate many of the suggestions from this meeting into the final design of the park.

The park design was presented at a public hearing with the Parks and Recreation Commission on February 21, 2007 at which time the Commission recommended approval of the design concept.

This memorandum will be posted on the City's website for the February 3, 2009, City Council agenda.

BUDGET REFERENCE

The \$6,000 annual operating and maintenance obligation associated with this facility was allocated to PRNS as part of the 2007-2008 budget process and is budgeted for beginning maintenance expenditures in FY 2009-10.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

HONORABLE MAYOR AND CITY COUNCIL

01-12-09

Subject: Second Amendment to Parkland Agreement for Tentative Map No. PT04-125

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CEQA

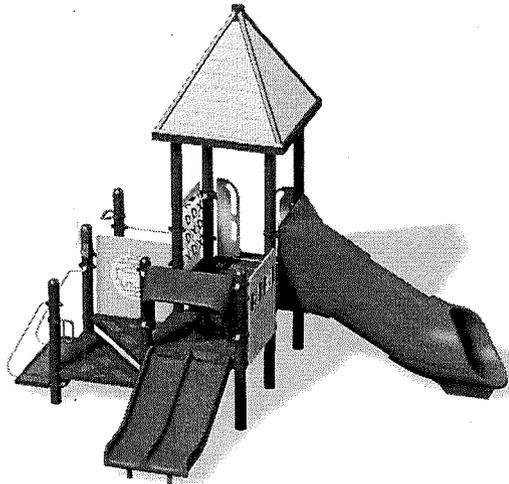
CEQA: PP08-134.



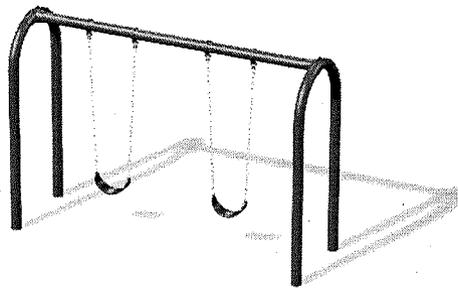
ALBERT BALAGSO
Director of Parks, Recreation
and Neighborhood Services

Attachments: San Antonio Tot Lot Turnkey Project Site Concept Plan
Second Amendment to Turnkey Parkland Agreement

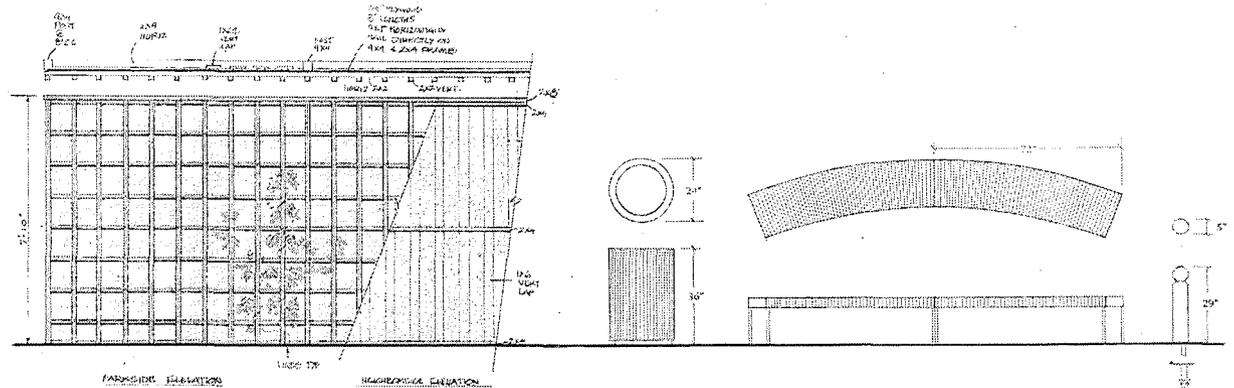
For questions please contact Matt Cano, Division Manager, at (408) 535-3580.



PLAY APPARATUS



DOUBLE SWING SET



PROPERTY LINE WOOD FENCE

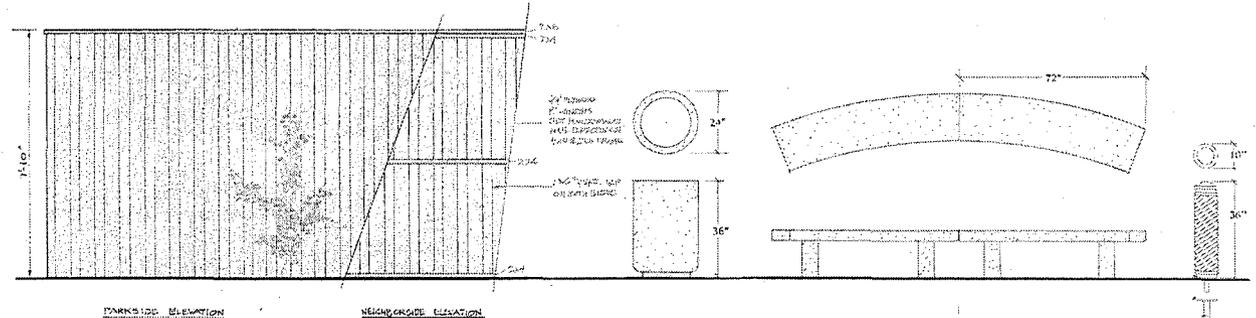
STEEL WASTE CONTAINER

STEEL BENCH

STEEL BOLLARD

ELEVATIONS & PLANS

SCALE: 1/2"=1'-0"



PROPERTY LINE WOOD FENCE

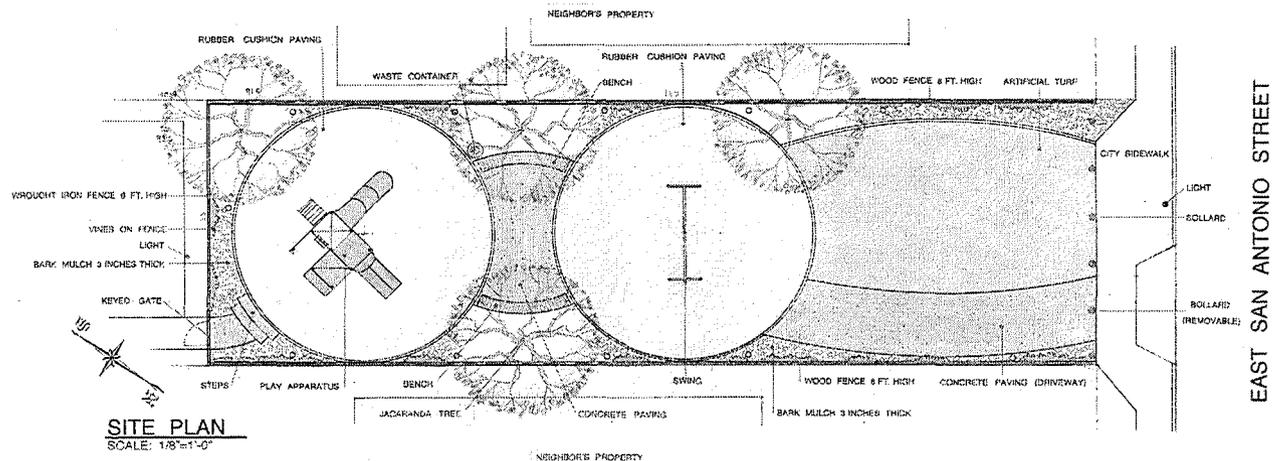
CONCRETE WASTE CONTAINER

CONCRETE BENCH

CONCRETE BOLLARD

ELEVATIONS & PLANS

SCALE: 1/2"=1'-0"



SITE PLAN

SCALE: 1/8"=1'-0"

EAST SAN ANTONIO STREET PARK

RECORDED WITHOUT FEE UNDER
SECTION 6103 GOVERNMENT CODE
OF THE STATE OF CALIFORNIA

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of San José
Department of Parks, Recreation and
Neighborhood Services
Community Facilities Development Division
200 East Santa Clara St., 9th Floor Tower
San José, CA 95113-1905

Final Tract Map, Tract No. 9705

**SECOND AMENDMENT TO PARKLAND AGREEMENT
FOR
TENTATIVE MAP NO. PT04-125
BETWEEN CITY OF SAN JOSE AND DKB HOMES, LLC
(CHAPTER 19.38 OF SJMC)**

THIS SECOND AMENDMENT TO PARKLAND AGREEMENT is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City") and DKB Homes, LLC, a California Limited Liability Company ("Developer") on the date of execution by City.

RECITALS

A. **Whereas**, on January 11, 2008, City and Developer entered into an agreement entitled "Parkland Agreement For Tentative Map No. PT04-125 between City of San Jose and DKB Homes, LLC (Chapter 19.38 of SJMC)" ("Agreement") under which Developer agreed to satisfy its Parkland Dedication Obligation relating to Tentative Map No. PT04-125, Final Tract Map No. 9705.

B. **Whereas**, on June 17, 2008, City and Developer entered into a "First Amendment to Parkland Agreement for Tentative Map No. PT04-125 between City of San Jose and DKB Homes, LLC" ("First Amendment") to extend the completion date of the park improvements and dedication of the park site to City from June 30, 2008 to December 30, 2008.

C. **Whereas**, City and Developer now desire to amend the Agreement to further extend the completion date of the park improvements and dedication of the park site from December 30, 2008 to June 30, 2009.

D. **Whereas**, City's Director of Parks, Recreation and Neighborhood Services ("City's Director") is charged with the administration of this Agreement in conjunction with the Director of Public Works ("Director of PW"). The Director of PW is responsible for the review, inspection, approval, and acceptance of the park improvements and acceptance of the dedication of land.

In view of the above, the parties agree as follows:

SECTION 1. SECTION 2, "Offer of Dedication; Design and Development of Park Improvements" is amended to read in its entirety as follows:

- "A. Developer affirms its irrevocable offer to dedicate to City approximately 0.084 acres (or approximately 3,675 square feet) of real property located at 1650 East San Antonio Street ("Park Site") as identified on the Tentative Map for the Development and as shown in the conceptual plan for the Park Improvements depicted on the attached **Exhibit A** ("Park Site Plan"). Developer shall be responsible for all costs incurred in the conveyance of the Park Site to City in accordance with the requirements and specifications set forth in this Agreement.
- B. Developer shall be responsible for the development of plans and specifications for, and the construction of Park Improvements on the Park Site consistent with the Park Site Plan and as more particularly described in this Agreement. Developer shall develop plans and specifications for the Park Improvements ("Project Specifications") for the review and approval of the Director of PW, as more particularly described in the attached **Exhibit B**.
- C. The parties acknowledge that the size, dimensions, and other particular characteristics of the Park Improvements have not been determined as of the date of execution of this Agreement. The parties, however, agree that the Park Improvements shall consist of the following types of improvements: children's play lot, artificial turf area, walkways, benches, privacy fencing and miscellaneous landscaping. The locations of the Park Improvements on the Park Site are more particularly described in **Exhibit A**.
- D. Developer shall be responsible for all costs incurred for planning, design, construction, and supervision of the construction of all Park Improvements, including without limitation, City's plan review and inspection. Developer shall cause all labor and material incorporated in the Park Improvements to be furnished in accordance with the requirements and specifications set forth in this Agreement.
- E. The total cost of the Park Improvements is estimated to be \$335,700.00. It is anticipated that Developer will exceed Developer's Parkland Dedication Obligation by \$238,900.00 in constructing and installing the Park Improvements on the Park Site. Notwithstanding Section 2D of this Agreement, City agrees to reimburse Developer in the amount not to exceed \$238,900.00 for the anticipated costs of the Park Improvements that exceeds Developer's Parkland Dedication Obligation. The Fees and Credit Summary associated with Developer's Parkland Dedication Obligation are more particularly described in **Exhibit C**.
- F. Developer shall provide the City with receipts, invoices and other documentation requested by City demonstrating that Developer has expended at least \$335,700.00 in monetary funds for the construction of the Park Improvements described in this Agreement. Upon City's acceptance of the Park Improvements and receipt of Developer's receipts, invoices and other requested documentation and request for reimbursement, the City shall process a reimbursement to the Developer. Any costs and expenses in excess of the estimated total costs for the Park Improvements in the amount of \$335,700.00 for planning, design, construction, supervision or other related costs of the construction of all Park Improvements shall be the sole responsibility of the Developer. In no event shall the reimbursement amount exceed \$238,900.00.

G. The Park Improvements to be installed on the Park Site shall be completed by June 30, 2009. The City's Director may, at the City Director's discretion, grant extensions of the completion requirement specified in this subsection.

SECTION 2. All of the terms and conditions of the original AGREEMENT not modified by this Second Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF the day and year hereinafter written.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____

JOHNNY V. PHAN
Deputy City Attorney

Name: LEE PRICE, MMC

Title: City Clerk

Date: _____

200 East Santa Clara Street
San Jose, CA 95113

"SUBDIVIDER"

DKB HOMES, LLC
A California Limited Liability Company

By: _____

Charles W. Walton,
Manager

DKB Homes, LLC
West Julian Street #200
San Jose, CA 95110-2406