AGENDA OF A SPECIAL MEETING

PARKING AUTHORITY OF THE CITY OF NATIONAL CITY

City Council Chambers
Civic Center
1243 National City Boulevard
National City, California
Tuesday – September 5, 2017 - 6:00 P.M.

Open To the Public

ROLL CALL

OPEN SESSION

CONSENT CALENDAR

Consent Calendar: Consent calendar items involve matters, which are of a routine or noncontroversial nature. All consent calendar items are adopted by approval of a single motion by the City Council. Prior to such approval, any item may be removed from the consent portion of the agenda and separately considered, upon request of a Councilmember, a staff member, or a member of the public.

1. Resolution of the Parking Authority of the City of National City authorizing the Chairman to execute the Fourth Amendment to the Option Agreement with CarMax Auto Superstores California, LLC, a Virginia limited liability company, amending the total purchase price to $1,500,000 for 7.63 acres, extending the permitting period to September 14, 2018 with three additional one month extensions, having the Parking Authority deposit $1,500,000 to purchase the existing Open Space Easement by the close of Escrow, and have the Escrow closing occur thirty days after the expiration of the permitting period but not later than December 28, 2018. (Housing & Economic Development)

ADJOURNMENT

Regular Meeting of the Parking Authority of the City of National City - Tuesday - August 21, 2018 - 6:00 p.m. - Council Chambers - National City, California

Council Requests That All Cell Phones and Pagers Be Turned Off During City Council Meetings

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NOTICE OF SPECIAL MEETING

PARKING AUTHORITY OF THE CITY OF NATIONAL CITY

City Council Chambers
Civic Center
1243 National City Boulevard
National City, California
Tuesday – September 5, 2017 - 6:00 P.M.

NOTICE IS HEREBY GIVEN that the Parking Authority of the City of National City will hold a special meeting on Tuesday, September 5, 2017, at 6:00 p.m., or as soon thereafter as the matter may be considered, at the Civic Center, 1243 National City Boulevard, National City, California, 91950. The business to be transacted at said meeting will be for the Parking Authority to consider the following:

1. Resolution of the Parking Authority of the City of National City authorizing the Chairman to execute the Fourth Amendment to the Option Agreement with CarMax Auto Superstores California, LLC, a Virginia limited liability company, amending the total purchase price to $1,500,000 for 7.63 acres, extending the permitting period to September 14, 2018 with three additional one month extensions, having the Parking Authority deposit $1,500,000 to purchase the existing Open Space Easement by the close of Escrow, and have the Escrow closing occur thirty days after the expiration of the permitting period but not later than December 28, 2018. (Housing & Economic Development)

Dated: August 31, 2017

RON MORRISON
Chairman

CITY OF NATIONAL CITY, CALIFORNIA
PARKING AUTHORITY AGENDA STATEMENT

MEETING DATE: September 5, 2017 **AGENDA ITEM NO.**

ITEM TITLE:

Resolution of the Parking Authority of the City of National City authorizing the City Manager to execute the Fourth Amendment to the Option Agreement with CarMax Auto Superstores California, LLC, a Virginia limited liability company, amending the total purchase price to $1,500,000 for 7.63 acres, extending the permitting period to September 14, 2018 with three additional one month extensions, having the Parking Authority deposit $1,500,000 to purchase the existing Open Space Easement by the close of Escrow, and have the Escrow closing occur thirty days after the expiration of the permitting period but not later than December 28, 2018.

PREPARED BY: Gregory Rose, Property Agent

DEPARTMENT: Housing & Economic Development

PHONE: (619) 336-4266

APPROVED BY: _____

EXPLANATION:

See Attachment No. 1 Background Report.

FINANCIAL STATEMENT:

APPROVED: _____ **Finance**

ACCOUNT NO. N/A

APPROVED: _____ **MIS**

See Attachment No. 1 for Financial Explanation

ENVIRONMENTAL REVIEW:

The Fourth Amendment to the Option Agreement is not considered a project as defined by the California Environmental Quality Act (CEQA), and is therefore not subject to CEQA. The Optionee may exercise the option to purchase the property only upon the City certifying compliance with CEQA.

ORDINANCE: **INTRODUCTION:** ☐ **FINAL ADOPTION:** ☐

STAFF RECOMMENDATION:

Adopt the Resolution.

BOARD / COMMISSION RECOMMENDATION:

Not Applicable

ATTACHMENTS:

1: Background Report
2: Fourth Amendment to the Option Agreement

Attachment No. 1

PARKING AUTHORITY OF THE CITY OF NATIONAL CITY
CarMax Forth Amendment to the Option Agreement

Option Agreement with CarMax

The Parking Authority of the City of National City ("Authority") owns a 15.08-acre parcel located at the southwest corner of Sweetwater Road and Plaza Bonita Center Way (APN 564-471-11). The Authority entered into an Option to Purchase Agreement ("Original Agreement") with CarMax Auto Superstores California, LLC, ("CarMax") on August 18, 2015. CarMax intended to use part of the Property to build a CarMax Superstore ("Project"), provide for on-site mitigation, and create a remnant parcel to be used for future development by the Authority. The total purchase price in the Original Agreement is not to be less than $3,500,000 for 9.5 acres. If the Optionee elected to purchase more than 9.5 acres, the Agreement further describes how the purchase price for additional acreage would be calculated.

CarMax Proposes Adjustment to Purchase Price and Size based on Current Appraisal

Based on an updated appraisal ("Appraisal"), CarMax recently proposed to offer an adjusted Purchase Price ("Purchase Price") of $1,500,000 for 7.63 acres ("Property"). A review of the Appraisal confirms that the adjusted Purchase Price being offered by CarMax is consistent with the fair market value of the property. Extensive analysis has been conducted with consultants, the City, Caltrans, and other regulatory agencies to determine that site preparation, mitigation and construction costs are much higher than originally estimated. The higher costs are the main factor in CarMax's proposed adjustment to the purchase price and size for the development of the Project. Under the Agreement, the Parking Authority would deliver the property free and clear of any encumbrances. The Fourth Amendment to the Option Agreement ("Fourth Amendment") proposes to reduce the sales price $1,500,000 for 7.63 acres.

CarMax Proposes Changes to the Permitting Period and Closing

The Fourth Amendment would give CarMax until September 14, 2018 to obtain all necessary Permits, Approvals, and the Tentative Parcel Map. CarMax would also have the right to extend the Permitting Period by up to three (3) successive one (1) month periods, upon prior written notice to the Authority. Closing shall occur on the earlier of thirty days after the expiration of the Permitting Period or December 28, 2018; however, the City Manager, or designee, has the authority to extend the date of Closing for two (2) thirty-day periods. At closing the Parking Authority will make immediately available funds in an amount equal to $1,500,000 (i.e., that amount, when added to the Purchase Price, permitting the Authority to purchase the Easement from the County).

Financial Explanation

An Open Space Easement ("Easement") granted to the County of San Diego ("County") encumbers and prevents development of the Property. Over 10 years ago, the City negotiated an Option to Purchase the Easement from the County. The Option Price ("Option Price") was negotiated at $3,000,000. The $1,500,000 proceeds from the sale of the Property would go towards purchase of the Easement. There is a 3.05 acre residual parcel ("Residual Parcel") created from the CarMax development that can be sold by the Authority. Staff is currently working with a hotel developer to purchase the Residual Parcel in order to make up the $1,500,000 (plus $125,000 for closing costs & broker fees) difference needed to purchase the Easement. In case the Residual Parcel is not sold concurrently to a third party by the close of escrow with CarMax, the Parking Authority could consider temporarily committing $1,500,000 plus closing costs (estimated at $125,000) to close escrow with CarMax and remove the Easement if the sale of the Residual Parcel did not happen concurrently with the sale of the CarMax Property. Staff would return to the Authority with a request for the appropriation at least three months before the close of Escrow with CarMax if the residual parcel remains unsold. The Parking Authority would then be reimbursed the expense with the sale of the Residual Parcel which has an estimated value of $1,800,000.

FOURTH AMENDMENT
TO
OPTION AGREEMENT

This FOURTH AMENDMENT TO OPTION AGREEMENT (this "**Amendment**") is entered into as of _____ _____, 2017, by and between THE PARKING AUTHORITY OF THE CITY OF NATIONAL CITY, a public body corporate and politic (the "**Authority**") and CARMAX AUTO SUPERSTORES CALIFORNIA, LLC, a Virginia limited liability company (the "**Optionee**").

RECITALS

A. The Authority and Optionee are parties to that certain Option Agreement (CarMax, National City, California) dated as of August 18, 2015, as amended by that certain First Amendment to Option Agreement dated as of May 3, 2016, that certain Second Amendment to Option Agreement dated as of August 26, 2016, and that certain Third Amendment to Option Agreement dated as of January 26, 2017 (collectively, the "**Original Agreement**"), relating to certain real property in National City, California (the "**Property**").

B. Optionee has been in the process of reviewing the feasibility of the Property for its intended use.

C. The parties desire to amend the Original Agreement as hereinafter provided.

D. Capitalized terms not otherwise defined in this Amendment shall have the meanings set forth in the Original Agreement. The Original Agreement, as modified by this Amendment, shall be referred to herein as the "**Agreement**."

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Purchase and Sale. Section 4(a) of the Original Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

> "(a) Sale of the Property. The Authority agrees to sell the Property to Optionee, and Optionee agrees to purchase the Property from Authority, on the terms and conditions set forth herein. At Closing, the Authority shall (i) exercise the option to purchase the Easement from the County and cause the County to release the Easement such that Escrow Agent shall issue the Title Policy (as defined below) to Optionee at Closing free and clear of the Easement, and (ii) convey the fee interest in the Property to Optionee by recordation of the Grant Deed (as defined below). The Escrow Agent shall issue the Title Policy (as defined below) to Optionee at Closing."

2. Definitions.

(a) The term "**Property**" in Section 5 of the Original Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

> "**Property**" means that certain approximately 7.63 acre parcel located at the southwest corner of Sweetwater Road and Bonita Center Road, in the City of National City, California as depicted as Parcel 3 on Exhibit "B" attached hereto, and the Improvements, if any, located thereon.

(b) The term "**Residual Parcel**" in Section 5 of the Original Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

> "**Residual Parcel**" means the remainder of the Entire Site which is not included in the Property, i.e., that certain approximately 3.05 acre parcel located at the southwest corner of Sweetwater Road and Bonita Center Road, in the City of National City, California as depicted as Parcel 1 on Exhibit "B" attached hereto, and the Improvements, if any, located thereon.

3. Purchase Price. Section 6(a) of the Original Agreement is hereby amended by deleting said paragraph in its entirety and inserting the following in lieu thereof:

> (a) Total Purchase Price. The purchase price to be paid by Optionee for the Property (the "**Purchase Price**") shall be One Million Five Hundred Thousand Dollars ($1,500,000.00).

4. Size and Dimensions of the Property. Section 7(h) of the Original Agreement is hereby deleted in its entirety. The size and dimensions of the Property have been determined and are as shown on Exhibit "B" attached hereto.

5. Permitting Period. Section 8(a) of the Original Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

> "Optionee shall have until September 14, 2018 to obtain all necessary Permits, Approvals, and the Tentative Parcel Map. Notwithstanding the foregoing, if Optionee is pursuing the Permits, Approvals, and the Tentative Parcel Map in good faith but is unable to obtain the Permits, Approvals, and the Tentative Parcel Map prior to the expiration of the Permitting Period, Optionee shall have the right to extend the Permitting Period by up to three (3) successive one (1) month periods, upon prior written notice to the Authority."

6. Closing. Section 10 of the Original Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

"10. Closing. Closing shall occur on the earlier of (i) thirty days after the expiration of the Permitting Period or (ii) December 28, 2018; provided, however, that notwithstanding the foregoing, the City Manager, or designee, has the authority to extend the date of Closing for two (2) thirty-day periods.

(a) At least one (1) Business Day prior to Closing, the Authority shall deposit into Escrow the following:

(1) the Grant Deed, duly executed and acknowledged, conveying fee simple title to the Property to Optionee;

(2) a duly executed certificate containing the Authority's taxpayer identification number and a statement that the Authority is not a foreign person pursuant to United States Internal Revenue Code section 1445. The affidavit shall be substantially in the form attached to this Agreement as Exhibit "D";

(3) a duly executed California Form 593(c) or other evidence that withholding of any portion of the Purchase Price is not required by the Revenue and Taxation Code of California;

(4) all additional documents and instruments as are reasonably required by Optionee and/or Escrow Agent to complete the Closing; and

(5) Immediately Available Funds in an amount equal to $1,500,000 (i.e., that amount, when added to the Purchase Price, permits the Authority to purchase the Easement from the County as required in Section 4(a)(i) above) or the Authority shall deposit such amount into an escrow established specifically for the purpose of purchasing the Easement from the County as required in Section 4(a)(i) above, which escrow shall close concurrently with the Closing. Notwithstanding the foregoing, the Optionee acknowledges that the Authority intends to sell the Residual Parcel to a third-party concurrently with the sale of the Property to Optionee, provided, however, that the sale of the Residual Parcel to a third-party shall not be a condition precedent to the Closing. The Optionee agrees that in the event an escrow is established to sell the Residual Parcel to a third-party which escrow will close concurrently with the Closing, then any amounts deposited into such escrow which are payable to the Authority shall be credited against the Authority's obligation to deposit $1,500,000 as set forth in this Section 10(a)(5).

(b) At least one (1) Business Day prior to Closing, the Optionee shall deposit into Escrow the following:

(1) the Deposit, as set forth in Section 6(b)(1), above;

(2) Immediately Available Funds in the amount required by Section 6(c), above; and

(3) all other documents and instruments required by this Agreement or reasonably required by the Authority and/or Escrow Agent to complete the Closing.

At Closing, the Authority shall deliver the Property to the Optionee as one legally platted parcel, and the Property shall be free and clear of all tenants or occupants or any other party claiming any rights in or to the Property."

7. Obligations of Optionee as to the Property and the Residual Parcel. Section 11(g) of the Original Agreement provides in part that following the Closing Date, Optionee would assume the obligation of the Authority "to install a vegetated buffer along the north side of the trail/walkway pursuant to Section 7 of the Option to Purchase Agreement..." with respect to the Property. Optionee has previously agreed to assume the obligations of the Authority to install the vegetated buffer as required by Section 7.A. of the Option to Purchase Agreement with respect to the Residual Parcel as well as the Property following the Closing Date. In addition, Optionee shall perform certain additional work with respect to the Residual Parcel and the Property following the Closing Date, including constructing a flood control channel in the area depicted on Exhibit "B" attached hereto (the "**Flood Control Channel**") and a retention pond on the Property, re-routing the adjacent stream, rough-grading the Residual Parcel to match elevations with the Property and allow the Residual Parcel to drain into the storm water retention pond to be located on the Property, and relocating the sanitary sewer line located on the Residual Parcel and connecting such relocated line to the existing line at the south side of the Residual Parcel, all as set forth more specifically in Exhibit "X" (Scope of Work to be Performed by Optionee) attached hereto. Such work shall be completed following the Closing Date and prior to the date on which Optionee has procured a certificate of occupancy with respect to the improvements to be constructed by Optionee on the Property. With respect to the work to be performed by Optionee for the Residual Parcel and Flood Control Channel, Optionee shall be granted an easement or license over such parcels, as needed (which documents shall be negotiated during the Permitting Period and recorded at Closing), in order to allow Optionee to perform such work and, in the case of the Flood Control Channel, to maintain same for a period of approximately five (5) years following the Closing Date (or such other period of time as may be applicable per the Permits and Approvals) (the "Optionee Maintenance Period"). Pursuant to such Permits and Approvals, Optionee may be required to fund an endowment to help the Authority maintain the Flood Control Channel following the expiration of the Optionee Maintenance Period. The provisions of this Section 7 will not merge into the Grant Deed and shall 7 surive the Closing.

8. Exhibit "B". Exhibit "B" of the Original Agreement (General Site Map of the Property) is hereby revised by deleting Exhibit "B" attached to the Original Agreement and inserting in lieu thereof Exhibit "B" attached hereto.

9. Exhibit "C". Exhibit "C" of the Original Agreement (Schedule of Performance) is hereby revised by deleting the following item:

Submission – Complete Application. The Optionee shall prepare and submit to the City a complete application for the necessary General Plan Amendment, Zoning Map Amendment, Municipal Code Amendment, Tentative Parcel Map, and Conditional Use Permit including all back-up information requested by Planning Staff.	Within ninety (90) days following the expiration of the Due Diligence Period.

10. General. Except as expressly amended hereby, the terms and conditions of the Original Agreement shall remain unmodified and in full force and effect. This Amendment may be executed in counterparts, all of which evidence only one agreement, binding on all parties, even though they are not signatories to the same counterpart. If any term, covenant or condition of this Amendment or its application to any person or circumstances shall be held to be invalid or unenforceable, the remainder of this Amendment and the application of such term or provision to other persons or circumstances shall not be affected, and each term hereof shall be valid and enforceable to the fullest extent permitted by law. The terms of this Amendment are binding upon and shall inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. This Amendment shall be governed by the laws of the State of California.

[Signatures continued on next page]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

AUTHORITY:

PARKING AUTHORITY OF THE CITY OF NATIONAL CITY

By:_____
Leslie Deese, City Manager

Approved as to Form:

By:_____
_____
Legal Counsel for the Parking Authority
of the City of National City

OPTIONEE:

CARMAX AUTO SUPERSTORES CALIFORNIA, LLC, a Virginia limited liability company

By: _____
K. Douglass Moyers, Vice President

EXHIBIT "B"

GENERAL SITE MAP OF THE PROPERTY

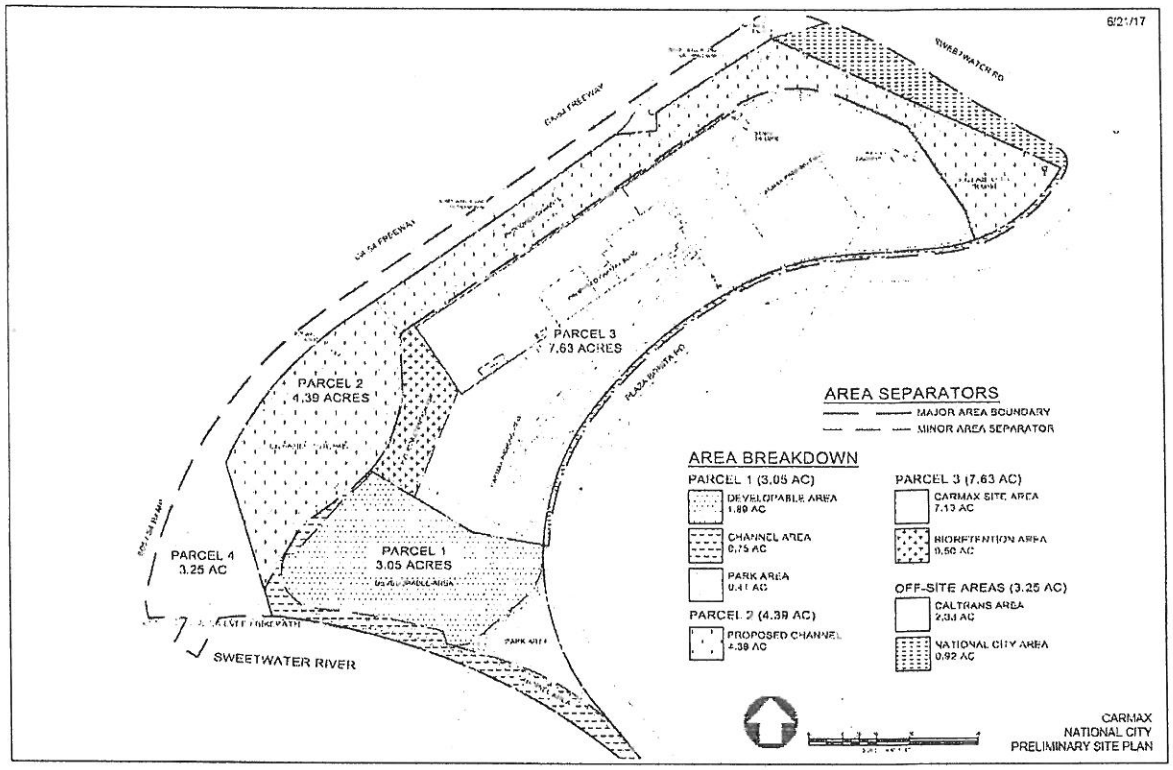

EXHIBIT "X"

SCOPE OF WORK TO BE PERFORMED BY OPTIONEE

1. Flood Control Channel:

   a. Optionee shall obtain all necessary Permits and Approvals required to reroute surface water through the Flood Control Channel and mitigate any impacted wetlands.

   b. Optionee shall construct all necessary improvements in the Flood Control Channel in accordance with the applicable Permits and Approvals.

2. Stormwater:

   a. Optionee shall obtain all necessary Permits and Approvals required to construct a stormwater facility in the general location depicted on Exhibit B (the "Stormwater Facility").

   b. The Stormwater Facility shall be designed to accommodate stormwater flow from the Property and the Residual Parcel.

   c. Optionee shall construct and maintain the Stormwater Facility in accordance with all applicable Permits and Approvals.

   d. The Residual Parcel shall be permitted to drain its stormwater to the Stormwater Facility, subject to the owner of the Residual Parcel paying its pro rata share of maintenance expenses, in accordance with an easement agreement to be recorded at Closing.

3. Grading:

   a. Optionee shall rough grade the Residual Parcel to match elevations with the Property, accommodate the Flood Control Channel, and allow the Residual Parcel to drain into the Stormwater Facility, in accordance with Exhibit "X-1" attached hereto.

4. Sanitary Sewer Line:

   a. Optionee shall relocate the existing sanitary sewer line shown on Exhibit "X-2" attached hereto to the location shown on Exhibit "X-2".

EXHIBIT "X-1"

SEE ATTACHED GRADING EXHIBIT

EXHIBIT "X-2"

SEE ATTACHED SEWER EXHIBIT