

# ORIGINAL

**FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT  
FOR PROJECT T-7, TRAFFIC SIGNALS AT CARMEL  
VALLEY ROAD @ CLARKVIEW LANE (#15) AND CARMEL  
VALLEY ROAD @ VIA ABERTURA (#16) AND PACIFIC  
HIGHLANDS RANCH PARKWAY @ BLAZING STAR LANE  
(#17) IN THE PACIFIC HIGHLANDS RANCH COMMUNITY  
- REIMBURSEMENT AGREEMENT NO. 1599811**

This First Amendment to the Reimbursement Agreement for Project No. T-7, Traffic Signals #15, #16, and #17 [Amendment] is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016 between the City of San Diego, a municipal corporation [City], and Pardee Homes, a California corporation, [Developer] [collectively the Parties]. This Amendment relates to reimbursement for the design and construction of Project No. T-7, traffic signals #15, #16, and #17, as identified in the FY 2016 Pacific Highlands Ranch Public Facilities Financing Plan [Financing Plan].

## RECITALS

A. On June 22, 2015, City executed a Reimbursement Agreement for the design and construction of traffic signals #15 and #16 in Pacific Highlands Ranch with Developer [Agreement]. The Agreement is on file in the Office of the City Clerk as Document No. OO-20435. Under the Agreement, Developer is to design and construct the project identified in **Exhibit B**, of the Agreement, specifically the traffic signals located at Carmel Valley Road @ Clarkview Lane (#15) and Carmel Valley Road @ Via Abertura (#16) [Project]. The total Estimated Cost of the Project was \$261,000 [Estimated Cost]. Ordinance No. O-20435, passed by the City Council on November 10, 2014, authorized an expenditure of an amount not to exceed \$261,000 for the Project [Maximum Funds].

B. The Maximum Funds were based on the FY 2013 Financing Plan. When the FY 2016 Financing Plan was approved by Resolution R-310151, effective December 11, 2015, it added a traffic signal at Pacific Highlands Ranch Parkway @ Blazing Star Lane (#17) to T-7 and increased the funds potentially available for reimbursement.

C. Because of the addition of traffic signal #17 to the Financing Plan, and extra work required to complete #15 and #16, Developer has requested that an additional \$215,000 be authorized for reimbursement for the Project. With the requested increased costs, the total Estimated Cost under the Agreement would be increased to \$476,000.

D. The FY 2016 Financing Plan estimate of \$2,400,000 minus the City's Administrative Costs (as defined in Section 12.1.5 of the Agreement) and minus the City's equipment expenditures, constitute the total and maximum City funds potentially available for reimbursement to Developer for Project No. T-7. Of that amount, a maximum of \$476,000 is available for reimbursement for the Project that is the subject of this Amendment [Amended Maximum Funds]; any amount in excess of the Amended Maximum Funds may not be reimbursed through this Amendment and shall constitute a Non-Reimbursable Cost. Developer is not automatically entitled to the Amended Maximum Funds or any other reimbursement. Developer must satisfy all terms of this Amendment to become eligible for any portion of the Amended Maximum Funds if and as they are collected and become available for

reimbursement.

NOW THEREFORE, in consideration of the recitals and mutual obligations of the parties herein expressed, City and Developer agree as follows:

1. The recitals set forth above are incorporated herein by reference. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.
2. **Exhibit A, Exhibit B, Exhibit C, and Exhibit E** in the Agreement shall be stricken in their entirety and shall be replaced by **Exhibit A, Exhibit B, Exhibit C, and Exhibit E** in this Amendment.
3. Section 3.3 is hereby stricken in its entirety and shall be replaced as follows:

**Estimated Cost(s).** Developer's Estimated Costs shall consist only of: (i) Project Costs, (ii) Developer's Administrative Costs (as defined in Section 3.3.1), and (iii) the Project Contingency (as defined in Section 3.3.2). The total Estimated Cost of Project is \$476,000 as set forth in **Exhibit E**, including interest (as defined in Section 12.1.6).

- 3.3.1 ***Developer's Administrative Costs.*** Developer's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures totaling a flat 5 percent of Developer's Project Costs.
- 3.3.2 ***Project Contingency.*** A Project Contingency of 10 percent of estimated construction costs is included in the Estimated Cost. The Project Contingency shall not be available for: (i) work required due to Developer's or Developer's agents' failure to perform work or services according to the terms of this Agreement or in compliance with the Construction Documents; or (ii) uninsured losses resulting from the negligence of Developer or Developer's agents.
- 3.3.3 ***Change Orders and Adjustments to Estimated Cost.*** Estimated Costs may be increased only through properly processed and approved Change Orders in accordance with **Exhibit I**. The Estimated Cost may only be increased if Developer provides documentation showing that the increase is reasonable in nature and amount, and is due to causes beyond Developer's or Developer's agents control or otherwise not the result of unreasonable conduct by Developer or Developer's agents which may, based on actual impact on the Project, include: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Developer's work; concealed conditions encountered in the completion of the Project; inability to reasonably obtain materials, equipment, labor, or additional required services; inflation; actual bids received for Project Costs being greater than estimated; or other specific reasons mutually agreed to in writing by City and Developer. Developer shall not be reimbursed, and no Change Order may be approved, for costs or expenses resulting from a design error or omission (unless such a design error or omission is the direct result of a City request for such design or omission), or Developer's or Developer's agents' negligence. Developer shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a

Change Order.

4. Section 4.5.2, is hereby stricken in its entirety and shall be replaced as follows:
  - 4.5.2 ***Nondiscrimination Ordinance.*** Developer shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. Developer shall provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between the Developer and any consultants, contractors, subcontractors, vendors and suppliers.
5. Section 5.1, is hereby stricken in its entirety and shall be replaced as follows:

#### **ARTICLE V. PREVAILING WAGE**

- 5.1 **Prevailing Wage.** Prevailing wages apply to the Project. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed on the Project is subject to State prevailing wage laws, and Developer shall ensure compliance with all applicable prevailing wage laws and requirements. For construction work performed on the Project that cumulatively exceeds \$25,000 and for alteration, demolition, repair and maintenance work performed on the Project that cumulatively exceeds \$15,000, Developer shall ensure that its contractors and subcontractors comply with State prevailing wage laws including, but not limited to, the requirements listed below.
  - 5.1.1 ***Compliance with Prevailing Wage Requirements.*** Pursuant to sections 1720 through 1861 of the California Labor Code, Developer shall ensure that its contractors and subcontractors ensure that all workers who perform work on the Project are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. Developer shall immediately notify City of any known violations of this Article.
    - 5.1.1.1 Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Developer shall ensure that its contractors and subcontractors post a copy of the prevailing rate of per diem wages determination at each job site and make them available to any interested party upon request.
    - 5.1.1.2 The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of contract for the Project. If the published wage rate refers to a

predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the contract, each successive predetermined wage rate shall apply to the contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the contract, such wage rate shall apply to the balance of the contract.

**5.1.2 Penalties for Violations.** Developer shall require its contractor and subcontractors comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

**5.1.3 Payroll Records.** Developer shall require its contractor and subcontractors comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Developer shall require its contractor to require its subcontractors to also comply with section 1776. Developer shall require its contractor and subcontractors submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Developer shall require its contractor to ensure that its subcontractors submit certified payroll records to the City.

**5.1.3.1** For contracts entered into on or after April 1, 2015, Developer shall ensure that its contractor and subcontractors furnish records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required by California Labor Code section 1771.4.

**5.1.4 Apprentices.** Developer shall require its contractors and its subcontractors comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Developer shall require its contractors to be held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

**5.1.5 Working Hours.** Developer shall require its contractors and subcontractors to comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

- 5.1.6 **Required Provisions for Subcontracts.** Developer shall require its contractors to include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.
- 5.1.7 **Labor Code Section 1861 Certification.** In accordance with California Labor Code section 3700, Developer shall require that its contractors secure the payment of compensation of its employees and by signing the contract, the contractors certify as follows: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this [agreement or contract]."
- 5.1.8 **Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- 5.1.9 **Department of Industrial Relations Registration.** This Project is subject to compliance monitoring and enforcement by the DIR. Developer shall register with the DIR pursuant to Labor Code section 1725.5. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to California Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. Developer shall ensure that its calls for bids and contract documents include the following provisions: "No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5"; "No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5"; "This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations"; and "By submitting a bid or proposal, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with California Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City upon request."
- 5.1.9.1 A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or grounds for

considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.

6. Section 16.1.4, shall be added as follows:

**Notice of Completion.** Developer shall execute and file with the County Recorder of San Diego County documentation indicating that the Project and all work depicted on the approved City drawings has achieved Final Completion and identifying the date of Project completion [Notice of Completion]. Developer shall provide the City Engineer with a conformed copy of the recorded Notice of Completion.

7. Section 24.3.3, with respect to notices to Developer, is replaced as follows:

To the Developer: Pardee Homes  
Attn: Jimmy Ayala, Division President – San Diego  
13400 Sabre Springs Parkway, Suite 200  
San Diego, CA 92128

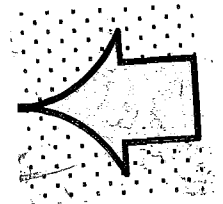
8. The Parties agree that Developer is not automatically entitled to any reimbursement under the Agreement or this Amendment, and that reimbursement is contingent upon City approval of Developer's Reimbursement Request in accordance with the terms of the Agreement and this Amendment. Developer shall submit its Reimbursement Requests in accordance with the provisions set forth in Article XII of the Agreement.
9. The Parties agree that this Amendment represents the entire understanding of City and Developer. All other terms and conditions of the Agreement not discussed in this Amendment remain in full force and effect; provided, however, that if a term in the Agreement specifically conflicts with this Amendment, this Amendment shall govern the terms of the Agreement.
10. The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

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IN WITNESS WHEREOF, this agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Ordinance No. O- 20663, authorizing such execution, and by Developer.

This Agreement was approved by the City Attorney this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, and this date shall constitute the Effective Date of this Agreement.

THE CITY OF SAN DIEGO, a Municipal Corporation



HERE

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Approved as to form:  
JAN I. GOLDSMITH, City Attorney

Dated: \_\_\_\_\_

By: \_\_\_\_\_

PARDEE HOMES, a California corporation

Date: 2-16-16

By: [Signature]  
Title: DIVISION PRESIDENT

Or.Dept: Planning-Facilities Financing

CITY OF SAN DIEGO  
FACILITIES FINANCING PROGRAM

Exhibit A

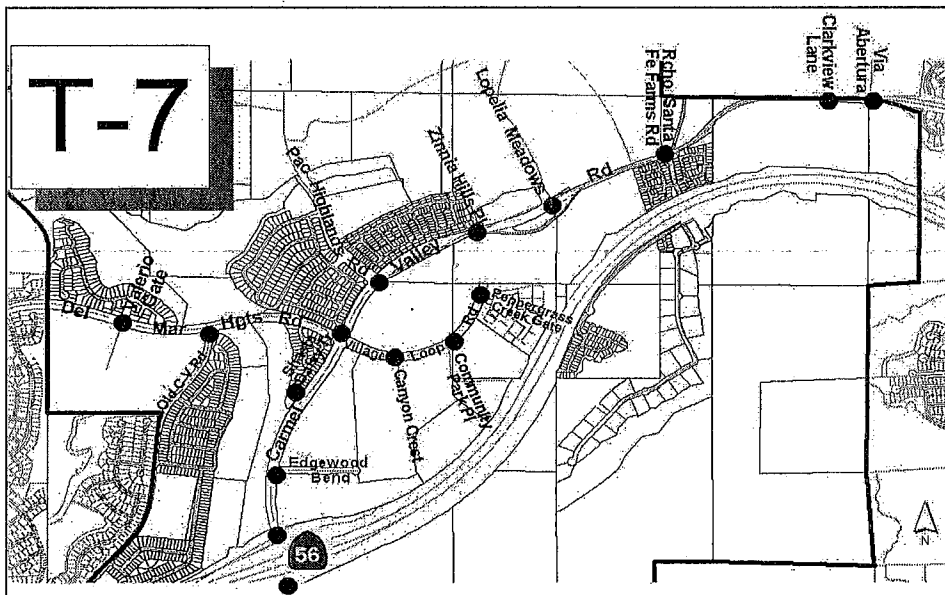
TITLE: TRAFFIC SIGNALS

DEPARTMENT: TRANSPORTATION & STORM WATER  
CIP, JO, or WBS #: 68-020.0/S-01062

PROJECT: T-7  
COUNCIL DISTRICT: 1  
COMMUNITY PLAN: PHR

| SOURCE       | FUNDING            | EXPENDED           | CONT APPROP      | FY 2016    | FY 2017    | FY 2018    | FY 2019    | FY 2020    |
|--------------|--------------------|--------------------|------------------|------------|------------|------------|------------|------------|
| FBA-PHR      | \$2,400,000        | \$1,559,272        | \$840,728        |            |            |            |            |            |
| FBA-BMR      |                    |                    |                  |            |            |            |            |            |
| FBA-TH       |                    |                    |                  |            |            |            |            |            |
| FBA-DMM      |                    |                    |                  |            |            |            |            |            |
| FBA-RP       |                    |                    |                  |            |            |            |            |            |
| GRANT        |                    |                    |                  |            |            |            |            |            |
| DEVELOPER    |                    |                    |                  |            |            |            |            |            |
| COUNTY       |                    |                    |                  |            |            |            |            |            |
| STATE        |                    |                    |                  |            |            |            |            |            |
| OTHER        |                    |                    |                  |            |            |            |            |            |
| UNIDEN       |                    |                    |                  |            |            |            |            |            |
| <b>TOTAL</b> | <b>\$2,400,000</b> | <b>\$1,559,272</b> | <b>\$840,728</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |

| SOURCE       | FY 2021    | FY 2022    | FY 2023    | FY 2024    | FY 2025    | FY 2026    | FY 2027    | FY 2028    |
|--------------|------------|------------|------------|------------|------------|------------|------------|------------|
| FBA-PHR      |            |            |            |            |            |            |            |            |
| FBA-BMR      |            |            |            |            |            |            |            |            |
| FBA-TH       |            |            |            |            |            |            |            |            |
| FBA-DMM      |            |            |            |            |            |            |            |            |
| FBA-RP       |            |            |            |            |            |            |            |            |
| GRANT        |            |            |            |            |            |            |            |            |
| DEVELOPER    |            |            |            |            |            |            |            |            |
| COUNTY       |            |            |            |            |            |            |            |            |
| STATE        |            |            |            |            |            |            |            |            |
| OTHER        |            |            |            |            |            |            |            |            |
| UNIDEN       |            |            |            |            |            |            |            |            |
| <b>TOTAL</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> | <b>\$0</b> |





**CITY OF SAN DIEGO  
FACILITIES FINANCING PROGRAM**

**TITLE:   TRAFFIC SIGNALS**

DEPARTMENT:   TRANSPORTATION & STORM WATER  
CIP, JO, or WBS #:   68-020.0/S-01062

**PROJECT:       T-7**  
COUNCIL DISTRICT:   1  
COMMUNITY PLAN:    PHR

**DESCRIPTION:**

THIS PROJECT ADDRESSES THE TRAFFIC SIGNALS THAT WILL BE REQUIRED AT INTERSECTIONS OF ARTERIAL ROADWAYS WITHIN THE COMMUNITY.

**POTENTIAL LOCATIONS:**

- 1) CARMEL VALLEY ROAD @ SR 56 (EAST BOUND) - COMPLETED
- 2) CARMEL VALLEY ROAD @ SR 56 (WEST BOUND) - COMPLETED
- 3) VILLAGE LOOP DRIVE @ CANYON CREST PLACE - COMPLETED
- 4) VILLAGE LOOP DRIVE @ COMMUNITY PARK PLACE - COMPLETED
- 5) CARMEL VALLEY ROAD @ SHASTA DAISY TRAIL - COMPLETED
- 6) CARMEL VALLEY ROAD @ DEL MAR HEIGHTS ROAD - COMPLETED
- 7) CARMEL VALLEY ROAD @ ZINNIA HILLS PLACE - COMPLETED
- 8) CARMEL VALLEY ROAD @ LOPELIA MEADOWS PLACE - COMPLETED
- 9) CARMEL VALLEY ROAD @ PACIFIC HIGHLANDS RANCH PARKWAY - COMPLETED
- 10) DEL MAR HEIGHTS ROAD @ OLD CARMEL VALLEY ROAD - COMPLETED
- 11) DEL MAR HEIGHTS ROAD @ VALERIO GATE - COMPLETED
- 12) CARMEL VALLEY ROAD @ EDGEWOOD BEND COURT - COMPLETED
- 13) VILLAGE CENTER LOOP ROAD @ PEPPERGRASS CREEK GATE
- 14) CARMEL VALLEY ROAD @ RANCHO SANTA FE FARMS ROAD
- 15) CARMEL VALLEY ROAD @ CLARKVIEW LANE
- 16) CARMEL VALLEY ROAD @ VIA ALBERTURA - COMPLETED
- 17) PACIFIC HIGHLANDS RANCH PARKWAY @ BLAZING STAR LANE - COMPLETED

**JUSTIFICATION:**

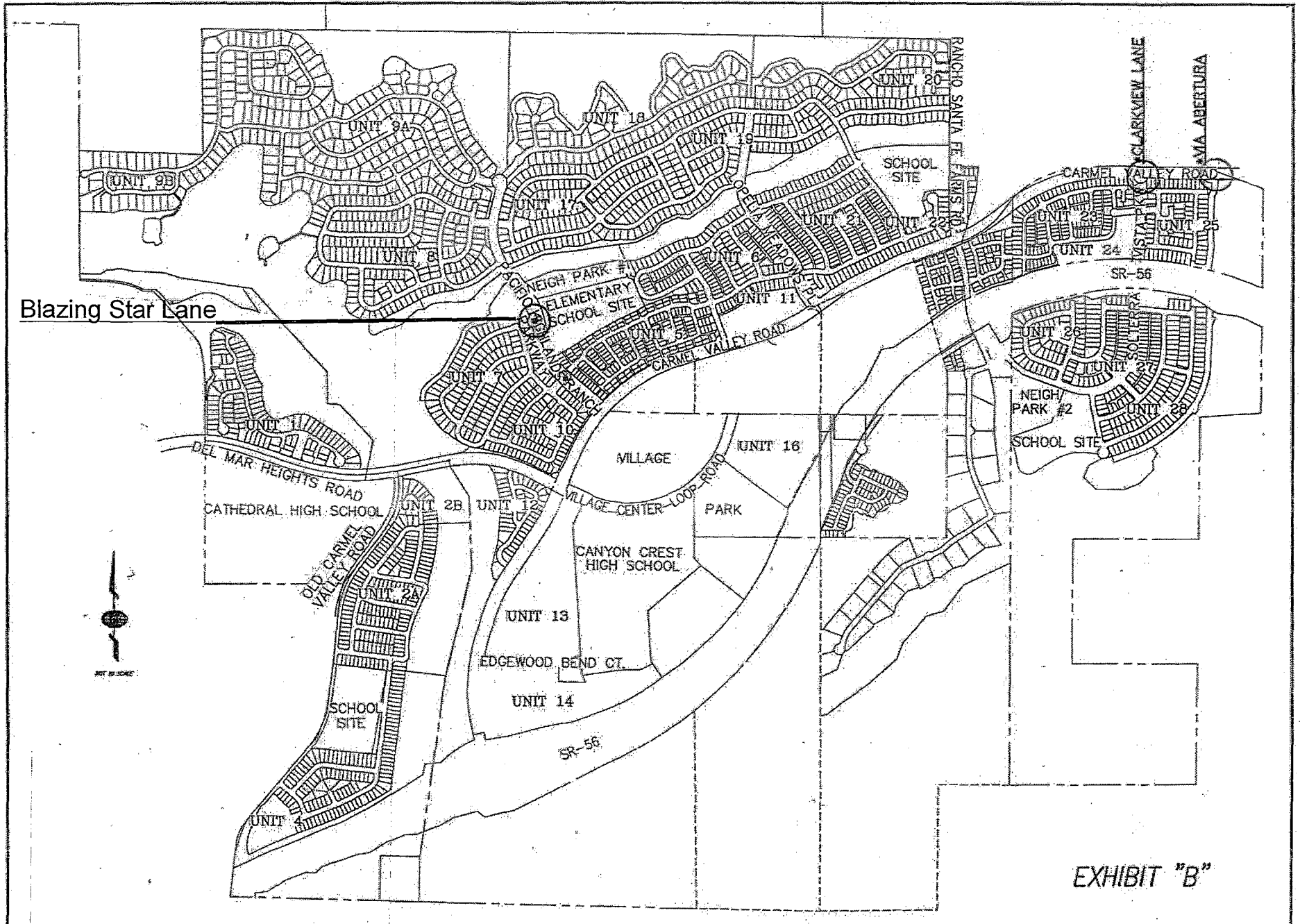
THIS PROJECT IS CONSISTENT WITH THE PACIFIC HIGHLANDS RANCH SUBAREA PLAN, IS IN CONFORMANCE WITH THE CITY'S GENERAL PLAN, AND IS NEEDED TO SERVE THE COMMUNITY.

**FUNDING:**

**NOTES:**

**SCHEDULE:**

REMAINING TRAFFIC SIGNALS SCHEDULED TO BE COMPLETED AS THE COMMUNITY DEVELOPS.



## **EXHIBIT "C"**

### **Description of Project**

This Project addresses the following traffic signals that are required at intersections of arterial roadways within in the Pacific Highlands Ranch Community: (#15) the installation of a new traffic signal at Carmel Valley Road and Clarkview Lane; (#16) the modification of an existing traffic signal at Carmel Valley Road and Via Abertura and (#17) the installation of a new traffic signal at the intersection of Pacific Highlands Ranch Parkway at Blazing Star Lane.

# EXHIBIT 'E'

Estimated Cost of Project T-7 (Signal #15: Carmel Valley Road @ Clarkview Lane)  
(Signal #16: Carmel Valley Road @ Via Abertura) (Signal #17: Pacific Highlands Ranch Parkway @Blazing Star Lane)

| <u>Item</u> | <u>Description</u>  | <u>Amount<sup>1,2</sup></u> |
|-------------|---|-----------------------------|
|             | <b>Hard Costs</b>   |                             |
| 1           | Install New Traffic Signal (Signal Bases, Pole, Arm, Masthead, Paint) (Signal #15: Carmel Valley Road @ Clarkview Lane) | \$ 204,000                  |
| 2           | Modify Traffic Signal (Signal #16: Carmel Valley Road @ Via Abertura)   | \$ 60,000                   |
| 3           | Install New Traffic Signal (Signal #17: Pacific Highlands Ranch Parkway @ Blazing Star Lane)                            | \$ 119,000                  |
| 4           | Traffic Control   | \$ 5,000                    |
|             |   |                             |
|             |   |                             |
|             | <b>Subtotal Hard Costs</b>  | \$ 388,000                  |
|             | <b>Soft Costs</b>   |                             |
| 1           | (Engineering)   | \$ 20,000                   |
| 2           | City Work Order Fees  | \$ 15,000                   |
|             | <b>Subtotal Soft Costs</b>  | \$ 35,000                   |
|             |   |                             |
|             | <b>Subtotal (Hard plus Soft Costs)</b>  | \$ 423,000                  |
|             | <b>Project Contingency</b>  | \$ 5,000                    |
|             |   |                             |
|             | <b>Project Costs</b>  | \$ 428,000                  |
|             |   |                             |
|             | <b>5% Administration Fee</b>  | \$ 23,000                   |
|             |   |                             |
|             |   |                             |
|             | <b>Interest (Not To Exceed \$50,000)</b>  | \$ 25,000                   |
|             |   |                             |
|             | <b>Reimburseable Costs</b>  | \$ 476,000                  |

Note 1: All figures are rounded to the nearest \$1,000.

Note 2: Cost savings on any line item, whether a hard cost or a soft cost or contingency, can be used to reimburse excess costs on other line items so long as the total project costs do not exceed the Maximum Funds under this Agreement.