

FIRST AMENDMENT TO AMENDED AND RESTATED PARK DEVELOPMENT AND REIMBURSEMENT AGREEMENT

FOR PROJECT NO. OM P-2 DENNERY RANCH NEIGHBORHOOD PARK

IN THE OTAY MESA COMMUNITY,

REIMBURSEMENT AGREEMENT NO. 444510

This First Amendment to the Amended and Restated Park Development and Reimbursement Agreement for Project No. OM P-2, Dennery Ranch Neighborhood Park, Reimbursement Agreement No. 444510 ("First Amendment") is made and entered into on January 11, 2023 ("Effective Date") by and between the City of San Diego, a municipal corporation ("City"), and Tri Pointe Homes IE-SD, Inc. (f/k/a Pardee Homes), a California corporation ("Developer") (collectively, the "Parties"). This First Amendment relates to reimbursement for the design and construction of Dennery Ranch Neighborhood Park identified as Project No. OM P-2, in the fiscal year ("FY") 2014 Otay Mesa Public Facilities Financing Plan ("Financing Plan").

RECITALS

- A. On November 21, 2016, the City executed an Amended and Restated Park Development and Reimbursement Agreement with Developer for Project No. OM P-2, Dennery Ranch Neighborhood Park in the Otay Mesa Community, Reimbursement Agreement No. 444510 ("Agreement"). The Agreement is on file in the Office of the City Clerk as Document No. O-20630. Under the Agreement, Developer will design and construct Project No. OM P-2 pursuant to Exhibit A of the Agreement ("Project"). The total estimated cost of the Project was Fifteen Million One Hundred Thousand Dollars (\$15,100,000) ("Estimated Project Costs"), which was approved by the City Council on April 5, 2016 pursuant to Ordinance No. O-20630.
B. Due to higher than expected construction bids and the inclusion of additional Project-related facilities, the current cost estimates have come in higher than expected. Pursuant to Sections 3.3, 3.4 and 4.3 of the Agreement, Developer has requested an additional Six Million Nine Hundred Thousand Dollars (\$6,900,000) be authorized for reimbursement for the Project. With requested increased costs, the total Estimated Project Costs under the Agreement would be increased to Twenty-Two Million Dollars (\$22,000,000) ("Amended Estimated Project Costs").
C. The City and Developer desire to amend the Agreement as provided in this First Amendment.

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

1. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

2. Parties. All references in the Agreement to Developer shall now mean Tri Pointe Homes IE-SD, Inc.

3. Increase in Estimated Project Costs. This First Amendment increases the Maximum Funds available for reimbursement for the Project from Fifteen Million One Hundred Thousand Dollars (\$15,100,000) to Twenty-Two Million Dollars (\$22,000,000) (“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 First Amendment and the Agreement to become eligible for any portion of the Amended Maximum Funds if and as they are collected and become available for reimbursement.

4. Project Costs. Section 4.1 of the Agreement shall be deleted in its entirety and replaced as follows:

4.1 Project Cost. Project Costs are the City’s land acquisition costs, City Administrative Costs as defined in Section 14.1.5, and the Developer’s reasonable costs of construction, materials and design necessary for the Project as approved by the City, an estimate of which is attached as **Exhibit E, Estimated Project Costs**. The total Estimated Project Costs are Twenty-Two Million Dollars (\$22,000,000). Developer may seek reimbursement only for Reimbursable Costs. Reimbursable Costs shall consist only of the Project Costs reasonably expended by Developer, approved for reimbursement in the Financing Plan, and approved by City under the terms of this Agreement. Project Costs shall include, but not be limited to the following activities, but only to the extent those activities occurred on or after May 13, 2014:

5 Changes in Project Schedule. This First Amendment revises the Project Schedule to address timing issues relating to the higher than expected construction bids. Accordingly, **Exhibit D** and **Exhibit E** of the Agreement are deleted in its entirety and replaced with the **Exhibit D** and **Exhibit E** attached to hereto. The amended **Exhibit D** and **Exhibit E** are fully incorporated into the Agreement to reflect the amended Project Schedule and the increased Amended Estimated Project Costs.

6. Approval of GDP, Construction Documents, Cost Estimates, and Park Name.

Section 6.4 of the Agreement shall be deleted in its entirety and replaced as follows:

The Developer provided to the City an approved GDP, a GDP Cost Estimate, and a park name of “Dennery Ranch Neighborhood Park”, approved by the Park and Recreation Board on June 15, 2017 for the 9 net useable acre park. The approved GDP is to be used as the basis for the design and construction of the Project and for preparation and approval of Construction Documents and Cost Estimates, in accordance with Exhibit N.

7 Funds for Reimbursement. Section 14.1.3 shall be deleted in its entirety and replaced as follows:

Developer shall only be entitled to reimbursement as set forth in this Agreement and only from FBA funds collected by City in accordance with the Financing Plan, as it may be amended, in the amount set forth in this Agreement and only as allocated for the Project, if and as such funds become available for the Project, after the appropriate deductions and expenditures are made, pursuant to the method of reimbursement

described in Section 14.1.7, and in the priority of reimbursement described in Section 14.1.11.

Notwithstanding the paragraph above, the City at its sole discretion may elect to fund all or any portion of the Project from funding sources other than the FBA, and if the City chooses to fund the project from sources other than the FBA, the Developer shall be entitled to reimbursement from those certain funds. In the event the City chooses to fund all or any portion of the project from sources other than the FBA, the references to the FBA in Sections 14.1.7 and 14.1.11 shall be interpreted to include the actual funding source(s).

The Parties wish to construct this Project on a "Phase-Funded Basis." Therefore, the Project may be built-out in phases as FBA or other funds are or become available for reimbursement. Developer is not obligated to commence development of Project components unless and until the City confirms funds are available for reimbursement for the implementation of future Project component(s) identified in the Agreement. Developer's failure to commence development of future Project components shall not constitute a breach this Agreement unless and until the City has provided a Notice to Proceed confirming FBA or other funds are available and devoted to the reimbursing Developer for the Project. Though the reimbursement of the Project is covered under one Agreement, under the Phase individual improvements shall be accounted for as if it were separate projects.

- 8 Reimbursement Timing. Section 14.1.8 shall be deleted in its entirety and replaced as follows:

Subject to the limitations of Article XIV, and at the City's discretion, provided that Reimbursement Requests have been approved for such amounts, Developer shall be entitled to reimbursement as follows:

- 14.1.8.1 The Purchase Price of the property (as defined in Section 5.2) upon close of escrow (as defined in Section 5.3).
- 14.1.8.2 Up to 25 percent of the remaining Reimbursable Costs estimated for each phase of the Project, as identified by plans submitted by Developer, subject to the Developer satisfying all of the following requirements:
- All plans (GDP and construction documents) and specifications for the Project have been approved by the City, and
 - Any right-of-way required for the Project has been secured and dedicated, and
 - All required approvals for grading and improvement plans and environmental clearances necessary for the Project have been secured, and the improvements are permit ready, and
 - All City fees and costs have been paid, and
 - Evidence satisfactory to the City Developer has complied with and satisfied Article VII (Competitive Bidding, Equal Opportunity, and Equal Benefits) and Section 6.1 (Selection of Consultant) of the Agreement.

14.1.8.3 Up to 50 percent of the remaining Reimbursable Costs estimated for each phase of the Project, as identified by plans submitted by Developer, subject to Developer satisfying all of the above-referenced requirements for the 25 percent reimbursement, and Developer has received valid bids for each phase of the Project, as identified by plans submitted by Developer, which have been approved by the City and performance bonds, payment bonds, and warranty bonds as described in Article XVIII have been provided. Such reimbursement shall be based on the Reimbursable Costs.

14.1.8.4 The remaining Reimbursable Costs for each phase of the Project, as identified by plans submitted by Developer, reasonably expended shall be paid to Developer upon Final Completion (as defined in Section 17.1) for each phase of the Project, as identified by plans submitted by Developer.

9 Miscellaneous. Except as set forth in this First Amendment, all of the terms and conditions of the Agreement remain unmodified and in full force and effect; provided, however, that if a term in the Agreement specifically conflicts with this First Amendment, this First Amendment shall govern the terms of the Agreement.

IN WITNESS WHEREOF, this First Amendment is executed by both Parties and is executed on _____, 2022 ("Effective Date").

THE CITY OF SAN DIEGO, a municipal corporation

Dated: January 5, 2023

By: Elyse W. Lowe

Name: Elyse W. Lowe

Title: DSD Director

Approved as to form:
City Attorney, Mara W. Elliott

Dated: January 11, 2023

By: Shannon Eckmeyer

Shannon Eckmeyer
Deputy City Attorney

TRI POINTE HOMES IE-SD, INC.,
a California corporation

Dated: MAY 4, 2022

By: Jimmy Ayala

Name: Jimmy Ayala

Title: Division President

EXHIBIT D
Estimated Project Schedule

Dennerly FBA Project P-2
Dennerly Ranch Park

Activity	Schedule
Council Approval of Amended and Restated Reimbursement Agreement (Completed)	December 2020
General Development Plan (Completed)	June 2017
Bridging Documents (Completed)	October 2018
1st Design-Build Solicitation (2-Step SOP) (Completed)	April 2018 to March 2019
Notice Rejecting all Design-Build Proposals (Completed)	March 2019
2nd Design-Build Solicitation (2-Step SOP) (Completed)	June 2020 to March 2021
Notice Rejecting all Design-Build Proposals (Completed)	March 2021
Council Approval of 1st Amendment to Amended and Restated Reimb. Agreement (To Pursue Design, Bid, Build & Phased Funding)	September 2022
Complete Bridging Documents to 100% Design	Nov. 2021 to May 2022
City Review & Permit Processing	May 2022 to March 2023
Public Advertisement and Bid (Phase 1)	March 2023 to July 2023
Award Design, Bid, Build Contract (Phase 1)	July 2023
Construction (Phase 1)	July 2023 to July 2024
Public Advertisement and Bid (Future Phases)	TBD (Based Upon Avail Funds) 3-months per phase
Construction (Future Phases)	TBD (Based Upon Avail Funds) 6 to 12-months per phase
Construction Complete & Park Conveyed to City	TBD (Based Upon Avail Funds)

EXHIBIT E
Developer's Estimated Cost

Project Title: OM P-2 Dennery Ranch Neighborhood Park

ITEM DESCRIPTION	Total Cost
Land Acquisition Costs (Ref. Section 4.1.1)	
Market Value of the Property (based on 9 usable acres) (Ref Section 5.2)	\$ 7,290,000
Contingency for Anticipated taxes, assessments, and interest (Ref Section 5.2)	\$ 431,183
Total Land Acquisition Costs (Purchase Price)	\$ 7,721,183
1. Construction Hard Costs (Design-Build) (Ref. Section 4.1.2)	
Desing-Build Hard & Soft Costs	\$ 9,671,235
Subtotal No. 1:	\$ 9,671,235
2. Soft Costs (Ref. Section 4.1.3)	
Professional services for preparation of the GDP, bridging documents, specifications, and cost estimates. Construction administration and construction management.	\$ 723,000
Subtotal No. 2:	\$ 723,000
3. Other Costs (Ref. Section 4.1.4)	
Includes bonding and insurance costs, charges for City Permits & associated processing, City staff charges for development of the Park Development and Reimbursement Agreement No. 444510, and City Administrative Costs per Section 14.1.5.	\$ 604,000
Subtotal No. 3:	\$ 604,000
3. Subtotal Project Costs (Subtotals of No. 1 thru No.3) (Section 4.1)	\$ 10,998,235
4. Project Contingency (25% of Hard Costs) (Ref. Section 4.1.5)	\$ 2,455,671
5. Developer Administration Costs (5% of Total Hard, Soft & Other Costs) (Section 4.1.6)	\$ 549,912
6. Interest on Reimbursement Payment (Up to Maximum per Agreement) (Section 14.1.6)	\$ 275,000
3. Estimated Project Costs (Subtotals of No. 3 thru No.6)	\$ 14,278,817
TOTAL ESTIMATED PROJECT COST INCLUDING LAND ACQUISITION (Section 4.1)	
	\$ 22,000,000

Instructions:

Please include applicable Financing Plan project number in *Project Title*.

Sections 3 and below are locked and cannot be changed.

Note:

The final cost of Individual line items may be more or less than estimate as long as *Total Project Costs* do not exceed the *Maximum Funds* allowed under this agreement.

ORDINANCE NUMBER O- 21581 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 14 2022

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE FIRST AMENDMENT TO THE AMENDED AND RESTATED PARK DEVELOPMENT AND REIMBURSEMENT AGREEMENT FOR PROJECT NO. OM P-2 DENNERY RANCH NEIGHBORHOOD PARK, REIMBURSEMENT AGREEMENT NO. 444510, IN THE OTAY MESA COMMUNITY.

WHEREAS, On November 21, 2016, the City of San Diego (City) executed an Amended and Restated Park Development and Reimbursement Agreement No. 444510 (Agreement) with Tri Pointe Homes IE-SD, Inc. (f/k/a Pardee Homes), a California corporation (Developer) for the design and construction of Project No. OM P-2 Dennery Ranch Neighborhood Park pursuant to Exhibit A of the Agreement (Project), in the Otay Mesa Community; and

WHEREAS, the Agreement allows for the Developer to complete the design and construction of the Project; and

WHEREAS, the original estimated costs of the Agreement was fifteen million one hundred thousand dollars (\$15,100,000); and

WHEREAS, due to unforeseen costs, including higher than expected construction bids, the Developer has requested an additional six million nine hundred thousand (\$6,900,000) to be authorized for reimbursement for the Project with the total estimated costs of the Project be increased to twenty two million dollars (\$22,000,000); and

WHEREAS, to reflect the additional costs, the City and Developer have negotiated the proposed First Amendment to the Agreement, a copy of which is included in the backup materials that accompany this Ordinance; and

WHEREAS, under Charter section 99, no contract, agreement, or obligation extending for a period of more than five years may be authorized except by Ordinance approved by a two-thirds majority vote of the City Council; and

WHEREAS, the Office of the City Attorney has drafted this ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the First Amendment to the Agreement with Tri Pointe Homes IE-SD, Inc. (f/k/a Pardee Homes), for the design and construction of Project No. OM P-2 Dennery Ranch Neighborhood Park (Project), in the Otay Mesa Community is approved.

Section 2. That the Mayor or designee is authorized and directed, on behalf of the City to sign and enter into the First Amendment to the Agreement with Tri Point Homes IE-SD, Inc., a copy of which is on file in the Office of the City Clerk as Document No. OO -

21581

Section 3. That the Chief Financial Officer, as delegated, is authorized to appropriate and expend an amount not to exceed \$22,000,000 from Fund No. 400856, Otay Mesa Facilities Benefit Assessment (FBA) or any combination of other alternative funding sources as subsequently determined and approved, contingent upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year, and on certification by the Chief Financial Officer that funds necessary for expenditure are available:

Section 4. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the City Council and the public prior to the day of its passage.

Section 5. This Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Shannon C. Eckmeyer
Shannon C. Eckmeyer
Deputy City Attorney

SCE:sc
09/19/2022
Or.Dept: [Planning]
Doc. No.: 3091737

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of DEC 06 2022.

ELIZABETH S. MALAND
City Clerk

By Kristell Medina
Deputy City Clerk

Approved: 12/14/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on DEC 06 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 14 2022

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Kristell Medina, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

NOV 15 2022

, and on DEC 14 2022

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Kristell Medina, Deputy

<p>Office of the City Clerk, San Diego, California</p> <p style="text-align: right;">21581</p> <p>Ordinance Number O-_____</p>

Passed by the Council of The City of San Diego on December 6, 2022, by the following vote:

YEAS: LACAVA, CAMPBELL, WHITBURN, VON WILPERT, CATE, CAMPILLO,
MORENO, & ELO-RIVERA.

NAYS: NONE.

NOT PRESENT: MONTGOMERY STEPPE.

RECUSED: NONE.

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Krystell Medina, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. **O-21581** (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **November 15, 2022**, and on **December 14, 2022**.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: Krystell Medina, Deputy