

February 24, 2017

Via U. S. Mail

Mr. Jimmy Ayala, Division President-San Diego
Pardee Homes
13400 Sabre Springs Parkway, Suite 200
San Diego, CA 92128

Dear Mr. Ayala:

Subject: First Amendment to Reimbursement Agreement - Project T-4.4 - Carmel Valley Road (Lopelia Meadows Place to Via Abertura) Pacific Highlands Ranch, Transmittal of Duplicate Original Document (K136011A-1)

On February 1, 2017 the City of San Diego executed the first amendment for the subject Agreement. A Duplicate Original of the Amendment document (K136011A-1) is enclosed herein.

If there are any questions, please contact Vicki Burgess, Project Manager, at (619) 533-3684.

Sincerely,



Frank A. Romero
Senior Contract Specialist

Enclosure: Duplicate Original Amendment (K136011A-1)

FAR/far

cc: Vicki Burgess, Project Manager, City of San Diego, MS 606F
Thomas F. Steinke, Esq, Seltzer Caplan McMahon Vitek, Via U.S. Mail
PWC File

DUPLICATE ORIGINAL

**FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT
FOR PROJECT T-4.4, CARMEL VALLEY ROAD
(LOPELIA MEADOWS PLACE TO VIA ABERTURA)
IN THE PACIFIC HIGHLANDS RANCH COMMUNITY –
REIMBURSEMENT AGREEMENT NO. 1599853**

This First Amendment to the Reimbursement Agreement for Project No. T-4.4, Carmel Valley Road (Lopelia Meadows Place to Via Abertura) [Amendment] is made this 1st day of February, 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 Carmel Valley Road (Lopelia Meadows Place to Via Abertura) identified as Project No. T-4.4, in the FY 2016 Pacific Highlands Ranch Public Facilities Financing Plan [Financing Plan].

RECITALS

A. On September 23, 2013, City executed a Reimbursement Agreement for the design and construction of Carmel Valley Road (Lopelia Meadows Place to Via Abertura) in Pacific Highlands Ranch with Developer [Agreement]. The Agreement is on file in the Office of the City Clerk as Document No. OO-20246. Under the Agreement, Developer is to design and construct the project identified in **Exhibit A**, of the Agreement, specifically Project No. T-4.4 [Project]. The total Estimated Cost of the Project was \$11,855,000 [Estimated Cost]. Ordinance No. O-20246, passed by the City Council on March 26, 2013, authorized an expenditure of an amount not to exceed \$11,855,000 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 increased the funds potentially available for reimbursement to the Project.

C. Due to higher than expected contract bids, the current cost estimates have come in higher than expected and the developer has requested that an additional \$822,000 be authorized for reimbursement for the Project. With the requested increased costs, the total Estimated Cost under the Agreement would be increased to \$12,677,000.

D. The FY 2016 Financing Plan estimate of \$14,000,000 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-4.4. Of that amount, a maximum of \$12,677,000 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. 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 \$12,677,000 as set forth in **Exhibit E**, including interest (as defined in Section 12.1.6).

Phase I Estimated Cost is not to exceed \$6,177,000. Other than potential interest that may be paid in accordance with Section 12.1.3, any increase to the Phase I costs above this amount will not be reimbursed by the City.

Phase II Estimated Cost is not to exceed \$6,450,000. Other than potential interest that may be paid in accordance with Section 12.1.3, any increase to the Phase II costs above this amount will not be reimbursed by the City.

- 3.3.1 ***Subdivider's Administrative Costs.*** Subdivider's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures totaling a flat five percent (5%) of Subdivider's Project Costs.
- 3.3.2 ***Project Contingency.*** A Project Contingency of ten percent (10%) of estimated construction costs is included in the Estimated Cost. The Project Contingency will not be available for: (i) work required due to Subdivider's or Subdivider'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 Subdivider or Subdivider's agents.
- 3.3.3 ***Change Orders and Adjustments to Estimated Cost.*** The "Procedure for Processing Change Orders" is attached as **Exhibit I**. Change Orders shall be on a form acceptable to the City. Estimated Costs may be increased only through properly processed and approved Change Orders in accordance with **Exhibit I**. Estimated Cost may be increased if Subdivider provides documentation showing the increase is reasonable in nature and amount, and is due to causes beyond Subdivider's control or otherwise not the result of unreasonable conduct by Subdivider which may, based on actual impact on 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 Subdivider's work; concealed conditions encountered in the completion of 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 Subdivider. Subdivider 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 Subdivider's or Subdivider's agents' negligence. Subdivider shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order. City may approve

an increase in Estimated Costs and/or delineate a project which may be constructed within Estimated Costs. If City chooses not to pursue the above options, Subdivider may elect to construct Project and forgo any reimbursement in excess of Estimated Cost.

3. 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.
4. 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.

5. Section 16.1.3, shall be added as follows:

16.1.3 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.

6. Section 16.1.4, shall be added as follows:

16.1.4 Capitalization. The Developer shall submit a capitalization form with respect to the Project in a form acceptable to the FF Project Manager. An example is provided as **Exhibit W.**

7. Section 25.3.3, 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.

IN WITNESS WHEREOF, this agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to San Diego Municipal Code section 142.0640(f), authorizing such execution, and by Developer.

This Agreement was approved by the City Attorney this 1 of February, 20 17, and this date shall constitute the Effective Date of this Agreement.

THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: 2.1.17

By: [Signature]

Approved as to form:

MARA W. ELLIOTT, City Attorney

Dated: 2.1.2017

By: [Signature]
Deputy City Attorney

PARDEE HOMES, a California corporation

Date: 10.31.16

By: [Signature]
Title: DIVISION PRESIDENT

Or.Dept: Planning-Facilities Financing



13400 Sabre Springs Parkway, Suite 200
San Diego, CA 92128
Phone (858) 794-2500
Fax (858) 794-2599

EXHIBIT 'E'

Exhibit E: Estimated Cost of Carmel Valley Road East Improvements (without Water Main) FBA Project T-4.4

PHASE I & II: Lopella Meadows Place to Via Abertura

Item	Description	Phase I*	Phase II**	Amount
1	Grading	\$801,000	\$861,000	\$1,662,000
2	Storm Drain	\$110,000	\$331,000	\$441,000
3	Water	\$573,000	\$111,000	\$684,000
4	Sewer (See Note #2 below)	\$36,000	\$0	\$36,000
5	Dry Utilities	\$614,000	\$397,000	\$1,011,000
6	Demolition	\$61,000	\$0	\$61,000
7	Street Improvements	\$1,929,000	\$1,535,000	\$3,464,000
8	Walls (Retaining)	\$114,000	\$29,000	\$143,000
9	Street Lights & T.S. Interconnections	\$0	\$305,000	\$305,000
10	Erosion Control	\$120,000	\$51,000	\$171,000
11	Landscaping	\$514,000	\$750,000	\$1,264,000
12	Easement Acquisitions	\$3,000	\$0	\$3,000
CVRE Phase I & II Hard Cost Total		\$4,875,000	\$4,370,000	\$9,245,000
Soft Costs		\$1,008,000	\$1,473,000	\$2,481,000
CVRE Phase I & II Summary				
Subtotal (Hard & Soft Costs)		\$5,883,000	\$5,843,000	\$11,726,000
10% Contingency on Hard Costs***		\$0	\$300,000	\$300,000
Subtotal		\$5,883,000	\$6,143,000	\$12,026,000
5% Administration Fee		\$294,000	\$307,000	\$601,000
Subtotal		\$6,177,000	\$6,450,000	\$12,627,000
Interest (Not to Exceed \$50,000)				\$50,000
CVRE Phase I & II Grand Total (with Interest)				\$12,677,000

*Phase I: Lopella Meadows Place to 1,000 Feet East of Rancho Santa Fe Farms Road.

**Phase II: Approximately 1,000 Feet East of Rancho Santa Fe Farms Road to Via Abertura.

***The 10 % contingency on hard costs has been reduced because project construction has commenced and greater certainty is available to determine the contingencies.

Note #1: 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

Note #2: Sewer Lateral to Barczewski Property associated with ROW Acquisition at a cost of \$31,315 and \$4,685 of other Sewer Improvements.

EXHIBIT I

Procedure for Processing Change Orders

1. **Forms Required.** All Change Orders shall be in writing on the appropriate City form and must be approved or rejected by City in writing as provided in Section 3, below, and delivered to Developer.
2. **Written Approval of Change Orders.** Change Orders that will not result in an increase in the Estimated Cost may be approved by the RE. If a requested Change Order would result in an increase in the Estimated Cost, approval of the Change Order shall require City Council approval.
3. **Process for Approval of Change Orders.** Developer shall notify the RE in writing of the need for a Change Order. A Change Order must indicate whether the change will result in any change to the Estimated Cost, Project Schedule, or Project quality established during the design and submittal review process.
 - 3.1 ***Resident Engineer Approval.*** If the Change Order request does not result in an increase in the Estimated Cost, the RE shall either approve or reject the Change Order in writing within fourteen (14) calendar days of receiving Developer's written notice, provided Developer has submitted complete documentation substantiating the need for such Change Order. If City fails to respond to Developer's written notice within the fourteen (14) calendar days, the Change Order request shall automatically be deemed denied.
 - 3.2 ***City Council Approval.*** For Change Orders not subject to Section 3.1 above, City Council approval is required. In such cases, once a Change Order is preliminarily accepted by the appropriate City staff, City staff shall process the Change Order along with any required amendments to the Financing Plan and this Agreement as a 1472 (Request for Council Action). At a hearing on such Request for Council Action, City Council may either approve or reject such Change Orders. Council Approval shall not be subject to the fourteen (14) calendar day response time set forth above in Section 3.1. Furthermore, nothing in this Agreement shall compel the City Council to take any particular action.

EXHIBIT W

Capitalization Form: Capitalization Form to be completed by Developer initially upon receipt of Substantial Completion Letter (90%) from PWD Engineering, City Engineering Department. Capitalization Form to be updated upon final completion of Project (100%) to reflect all verified project costs.

Capitalization Cost Breakdown For Developer Built Reimbursable Public Projects-Uncompleted					
Capitalization Form to be completed by developer initially upon receipt of Substantial Completion Letter (90%) from City Engineering Department. Capitalization Form to be finalized upon Final Completion of Project (100%) to reflect all verified project costs. Actual Cost incurred should be used to fill our Capitalization Form, even if not fully reimbursed.					
1) Project Title/Location: _____			5) Permit Number: _____		
2) Project (PTS) Number: _____			6) Substantial Completion Letter Date: _____		
3) Internal Order Number: _____			7) As-Built Date: _____		
4) Drawing Number: _____			8) Public Facilities Financing Plan Ref. #: _____		
			Reimb. Agreement Resolution #: _____		
			Date Approved: _____		
TABLE A					
(1) Item	(2) Description	(3) Asset Code	(4) Quantity #	(5) Unit Measurement	(6) Total Cost *
STREETS					
Roadways		ROAD		SF	
Sidewalk		SIDE		SF	
Curb & Gutter		SIDE		LF	
Curb Ramps		SIDE		Each	
Medians		SIDE		SF	
Alleys		ALLY		SF	
Traffic Signals		TRAF		Each	
Street Lights		STRT		Each	
Guardrails		STRT		LF	
BRIDGES					
Vehicular/Wildlife		BRDG		SF	
Pedestrian		BRDG		SF	
Other (Specify)					
STORM DRAINS					
Storm Drains		STRM		LF	
Channels & Culverts		CHAN		LF	
Other (Specify)					
PARK INFRASTRUCTURE (list)					
Parkgrounds		PARK		Each/acres	
Picnic Shelter		PARK		Each	
Playground		PARK		Each	
Recreation Center		3000		Each/SF	
Comfort Stations		3000		Each	
Park Lighting		PARK		Each	
Pool		PARK		Each	
Bike Path or Multi-Use Trails		PATH		LF	
Parking Lot		LOTS		SF	
OTHER (list)					
Pedestrian Lighted Crosswalk		TRAF			
Fire Station		various			
Library					
Police Station					
Total Project Cost					\$ -
I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE INFORMATION PROVIDED ON THIS CAPITALIZATION FORM IS TRUE AND ACCURATE REGARDING THE CITY ACQUIRED INFRASTRUCTURES. PRINT NAME: _____ TITLE: _____ SIGNATURE: _____ DATE: _____			Name/Title _____ Contact No. _____ Prepared by: _____ City Use Only-Forward Original to Facilities Financing for Distribution		
* Project soft cost for administration, engineering, design, etc. should be allocated using the percentage of hard cost for each cost category.			Copy Comptroller's Office - CIP Fixed Asset Accountant Copy Street Division Copy Development Services Department		

1/26/2015