

(R-2002-1049 COR.)

RESOLUTION NUMBER R- 296241

ADOPTED ON APR 02 2002

WHEREAS, Western Pacific Housing, Inc.; Len-Greystone Homes, Inc.; Len-Greystone Torrey Highlands, L.L.C.; D.R. Horton San Diego Holding Co., Inc.; and McMillan Companies, L.L.C. [Developers]; own or have an interest in various tracts or parcels of real property located within the City in the area known as "Torrey Highlands," in the vicinity of State Route 56 [SR-56] and Camino Ruiz; and

WHEREAS, Developers and the City previously entered into an Agreement for funding the eastern half of the Camino Ruiz Interchange and the extension of SR-56 westerly, dated November 6, 2000, and was approved by the City Council on December 5, 2000, a copy of which is on file in the office of the City Clerk as Document No. RR-294355; and

WHEREAS, the City adopted the Torrey Highlands Public Facilities Financing Plan ["PFFP" or Financing Plan] and Facilities Benefit Assessment [FBA] on August 7, 2001, for the proposed development of public facilities in the Torrey Highlands community as provided in Agreement for Funding-Camino Ruiz Interchange (a funding and reimbursement agreement), a copy of which is on file in the office of the City Clerk as Document No. RR-294355; and

WHEREAS, the Financing Plan includes the right of way acquisition, design, construction and appurtenant public improvements of the Camino Ruiz Interchange at SR-56, as shown in the First Amendment to Agreement for Funding the Camino Ruiz Interchange; and

WHEREAS, it has been determined that payments by Developers satisfy the criteria set forth in Municipal Code Section 61.2213; and

WHEREAS, in order to expedite the project's construction and to allow for orderly construction there has been an increase in design, right-of-way, and construction costs which has made it necessary to amend the original Funding Agreement, which include extending SR-56 Phase I westerly to the Camino Ruiz Interchange [Project], and the portion of Camino Ruiz between the on and off ramps (Segment F) and the soil nail retaining wall at the North East Quadrant of the Interchange (Camino Ruiz Vernal Pool Retaining Wall) [Sub Projects] which are under new construction and have been funded by Western Pacific Housing; and

WHEREAS, the construction of the main lanes and ramps for SR-56 has been split into separate contracts to allow the grading, deep drainage facilities, sewer sleeves and main lane paving to be constructed by E.L. Yeager Construction within the previously approved expenditure limits. This City Council authorization is sought for a second supplemental contract with E.L. Yeager Construction to complete the Project; and

WHEREAS, the limits of work of E.L. Yeager's current SR-56 construction contract overlap with the limits of work to complete the Project it is not possible to award the second supplemental contract to a contractor other than E.L. Yeager. E.L. Yeager must complete this construction due to the impracticality of having two contractors on the site performing the work; and

WHEREAS, Developers will pay all costs necessary for the right of way acquisition, design and cause the construction of the Project and Sub Projects, as defined in the Agreement,

and accept credits and reimbursements from the FBA, as defined in the Financing Plan; NOW,  
THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, a First Amendment to the Agreement for Funding Camino Ruiz with Western Pacific Housing, Inc.; Len-Greystone Homes, Inc.; Len-Greystone Torrey Highlands, L.L.C.; D.R. Horton San Diego Holding Co., Inc.; and McMillan Companies, L.L.C. in the Torrey Highlands Community Area for extending the State Route 56 Phase 1 Project, westerly to the State Route 56/Camino Ruiz Interchange, and constructing the eastern half of the Camino Ruiz Interchange herein called "Project," under the terms and conditions set forth in the First Amendment for Funding Camino Ruiz Interchange Agreement on file in the office of the City Clerk as Document No. RR- 296241-1.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to accept the appropriation of \$11,916.147 from Western Pacific Housing, Inc.; Len-Greystone Homes, Inc.; Len-Greystone Torrey Highlands, L.L.C.; D.R. Horton San Diego Holding Co., Inc.; and McMillan Companies, L.L.C.; to Fund 39225, an Interest Bearing Account, of which \$5,128,247 will be deposited with the City of San Diego, and \$6,787,900 will be expended by the above Developers for design, acquisition of property, construction and other costs related to the Project, CIP 52-643.0.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to increase the Capital Improvements Program to increase the appropriation of

\$11,916,147 plus any accrued interest from Fund 39225, to the FYI 2002 Capital Improvements Program, to be utilized for the design, acquisition of property, construction and other costs related to the Project CIP 52-463.0.

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized and empowered to negotiate and execute a Supplemental Agreement with E.L. Yeager Construction, under the terms and conditions set forth in the First Amendment to Agreement for purposes of constructing the Project, CIP 52-463.0, upon certification by the Auditor and Comptroller of funds being available.

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized and empowered to execute a Ninth Amendment to Agreement with Boyle Engineering Corporation for professional engineering services for the Project, CIP 52.463.0, on file in the office of the City Clerk as Document No. RR-296241-2, upon certification by the Auditor and Comptroller of funds being available.

BE IT FURTHER RESOLVED that the expenditure of \$298,523 is authorized for the Ninth Amendment to Agreement with Boyle Engineering Corporation for the Project, CIP 52-463.0, of which \$128,647 is from Fund 39225, \$47,301 from Fund 38977, and \$122,575 from Fund 10515, upon certification by the Auditor and Comptroller of funds being available.

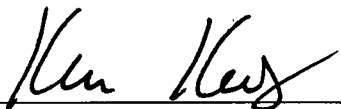
BE IT FURTHER RESOLVED, that the expenditure not to exceed \$2,027,000 is authorized from Fund 39225 for the acquisition of property rights, appraisals, litigation, condemnation, labor, title, escrow and miscellaneous costs for the Project, CIP 52-463.0, upon certification by the Auditor and Comptroller of funds being available.

BE IT FURTHER RESOLVED, that the expenditure not to exceed \$9,760,500, of which \$2,972,600 is from Fund 39225, and \$6,787,900 is from Developers, as an in kind contribution for other related design costs and for construction of CIP 52-643.0, upon certification by the Auditor and Comptroller of funds being available.

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized and empowered to negotiate and execute a Facilities Benefit Assessment [FBA] Cash/Credit and Reimbursement Agreement, for costs associated with the project, which includes reimbursement of \$11,916,147 contingent upon the Auditor and Comptroller first certifying that funds are available in the City Treasury.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller, upon advice from the administering department is hereby authorized to transfer excess funds, if any, to the appropriate reserves.

APPROVED: CASEY GWINN, City Attorney

By   
Keri Katz,  
Head Deputy City Attorney

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4/11/02 Cor. Copy  
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