

**SPECIAL REFUNDING AGREEMENT  
BETWEEN PARDEE HOMES, INC. AND THE CITY OF HENDERSON FOR THE  
SR-011 HORIZON RIDGE/GIBSON 2500 & 2370 ZONE  
POTABLE WATER FACILITIES**

This Special Refunding Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 (the “Effective Date”), by and between the CITY OF HENDERSON, a municipal corporation and political subdivision of the State of Nevada (“City”), and PARDEE HOMES, a Nevada corporation (“Developer”).

**RECITALS**

- A. WHEREAS, City is engaged in distributing potable water to customers within its boundaries consistent with regulations set forth in the Henderson Municipal Code, and City rules, policies and procedures; and
- B. WHEREAS, Developer, in connection with the construction of its residential development located near the intersection of Horizon Ridge Parkway and Gibson Road in Henderson, Nevada, has designed and constructed certain potable water backbone infrastructure to bring water service to the development area including a pumping station, reservoir, pressure-reducing station, and pipelines (collectively, the “Facilities”), more specifically described in Exhibit A, attached hereto; and
- C. WHEREAS, Chapter 14.16 of the Henderson Municipal Code (“HMC”), *Refunding Regulations*, provides for a refunding mechanism for the orderly development of the water utility system through the refunding of costs associated with the design and construction of water backbone infrastructure; and
- D. WHEREAS, Developer has made application to the Director of Utility Services for a special refunding agreement for the repayment of eligible costs of the design and construction of the Facilities; and
- E. WHEREAS, City will provide for the refunding of certain eligible costs of the Facilities, and Developer will dedicate the Facilities to the City, in accordance with HMC Chapter 14.16 and as further set forth herein.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

- 1. **DEFINITIONS.** Words and phrases capitalized in this Agreement shall have the same meaning as set forth in HMC Title 14, unless otherwise defined herein.
- 2. **REFUNDING; FEES & EXPENSES.**
  - 2.1 **Refunding Report.** The SR-011 Pardee Homes Horizon Ridge/Gibson Water System Improvements Refunding Report, prepared by Slater Hanifan Group, is

attached hereto as Exhibit B and by this reference incorporated herein (“Refunding Report”).

- 2.2 Basis of Refund. Eligible costs for refunding back to Developer under this Agreement are based upon the procedures and methodology established in the Refunding Report and in accordance with the Henderson Municipal Code, for the Special Refunding Area (as described therein). The maximum total refundable amount of \$5,329,063 is based upon a maximum equivalent development unit (EDU) number of 699. The final audited costs of the Facilities set forth in the Refunding Report will be indexed and depreciated on July 1<sup>st</sup> of each year during the term of this Agreement, in accordance with the Henderson Municipal Code.
- 2.3 Refund Payments. Refundable amounts will be paid quarterly from fees collected by City from participating developers in the Special Refunding Area, subject to the limitations set forth in this Agreement, until the total refundable amount has been paid or the expiration of the term of this Agreement, whichever occurs first.
- 2.4 Limits on Refund. Refund payments shall be made by City to Developer only from refunding fees collected by third-party developments participating in the Special Refunding Area. Under no circumstances will City be required to refund any amount except out of fees collected from developers and other participants, if any, in the Special Refunding Area.
- 2.5 City Fees and Expenses. Upon execution of this Agreement, Developer will pay the following fees and expenses presently due and owing to City:
  - (a) Initiation fees for City administrative, legal, financial and utility staff services, in connection with the preparation and administration of the provisions of this Agreement, in the amount of \$950.
  - (b) All actual costs of the financial audit of the Facilities.

Any additional expenses required to cover the actual cost of the Agreement or audit will be deducted by City from any future refunds.

### **3. ACCEPTANCE OF FACILITIES.**

- 3.1 Acceptance. Following construction of the Facilities by Developer according to City-approved plans, specifications, and testing, Developer will offer the Facilities to the City for acceptance. Subject to Section 3.2, City’s acceptance of the Facilities will occur upon the execution and delivery of a Letter of Acceptance in form acceptable to City.
- 3.2 Conditions Precedent to Acceptance. Prior to the issuance of a Letter of Acceptance, and before City shall accept responsibility for operation and maintenance of the Facilities, Developer shall provide to City, without charge,

“as-built” plans, easements as required, conveyance of title to the Facilities, certified payroll, and bid tabs.

- 3.3** Warranty. Developer shall warrant all Facilities against defect in materials and workmanship for a period of one year from the date of acceptance by the City. In the event City any expense is incurred by City due to such defects, such expense will be deducted from any refund that may become payable to Developer thereafter.
- 4.** TERM. The term of this Agreement during which refunds are payable will commence on the date City delivers a Letter of Acceptance to Developer as provided in Section 3 above, and shall not exceed twenty (20) years, after which time no further refund will be made to Developer. In the event City is unable for any reason to collect refund(s) from other customers whose properties are served by the Facilities during the term, then upon the expiration of the twenty year term such refund is extinguished.
- 5.** INDEMNIFICATION. Developer agrees to protect, indemnify, defend and hold City, its officers, employees and agents, harmless from and against any and all claims, losses, expenses, suits, actions, decrees, judgments, awards, attorney’s fees, and court costs (collectively, “Losses”) which may be suffered, sought against, recovered or obtained from City, its officers, employees or agents, arising out of or in connection with any alleged act or omission on the part of Developer in performing or failing to perform any of its obligations under this Agreement, except to the extent such Losses are caused by the gross negligence or willful misconduct of City.
- 6.** GENERAL TERMS.
- 6.1** Binding on Successors and Assigns – Neither this Agreement, nor the duties and obligations of Developer hereunder may be assigned without the written consent of City, which consent shall not be unreasonably withheld. The agreements and covenants included herein shall be binding on and inure to the benefit of any partners, legal representatives, permitted assigns, and successors-in-interest of the parties hereto.
- 6.2** Other Agreements – Nothing contained herein shall be construed as affecting the City’s or Developer’s respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to Developer’s development or operation under existing and future business licenses, which obligations are and shall remain independent of Developer’s rights and obligations, and City’s rights and obligations, under this Agreement.
- 6.3** Governing Law – This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Nevada.
- 6.4** Counterparts – This Agreement may be executed in counterparts, each of which shall be deemed an original.

**6.5** Notices – Any notice, payment or instrument required or permitted by this Agreement be given or delivered to a party shall be deemed to have been received (regardless of whether copies thereof have been delivered, transmitted or sent to, or received by, the entities designated to receive copies, as set forth below) when personally delivered, transmitted by telecopy or facsimile transmission (which shall immediately be confirmed by telephone and be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified, postage prepaid, addressed as follows:

City: City of Henderson, Nevada  
240 Water Street  
Henderson, Nevada 89015  
Attention: Department of Utility Services

With a copy to: City of Henderson, Nevada  
240 Water Street  
Henderson, Nevada 89015  
Attention: City Attorney

Developer: Pardee Homes  
4675 West Teco Avenue, Suite 115  
Las Vegas, Nevada 89118

Each party may designate, by notice in writing, any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**6.6** Attorneys' Fees – If any action is instituted to interpret or enforce any of the provisions of this Agreement, the party prevailing in such action shall be entitled to recover from the other party thereto reasonable attorney's fees and costs of such suit (including both pre-judgment and post judgment fees and costs) as determined by the court as part of the judgment.

*[Signature Page Follows]*

IN WITNESS WHEREOF, CITY and DEVELOPER have executed or caused to be executed by their duly authorized representatives, this Agreement, on the Effective Date:

**PARDEE HOMES (DEVELOPER):**

\_\_\_\_\_  
Klif Andrews  
Division Manager

On this \_\_\_\_ day \_\_\_\_\_ of, 2015, before me personally appeared \_\_\_\_\_ whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed in this instrument, and acknowledged that he executed the same.

\_\_\_\_\_  
Notary Public  
My Commission Expires on \_\_\_\_\_

(SEAL)

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CITY OF HENDERSON, NEVADA:

ATTEST:

\_\_\_\_\_  
Jacob Snow  
City Manager

\_\_\_\_\_  
Sabrina Mercadante, MMC,  
City Clerk

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
Priscilla Howell  
Director of Utility Services

\_\_\_\_\_  
Josh M. Reid  
City Attorney

APPROVED AS TO AMOUNT:

\_\_\_\_\_  
Richard A. Derrick  
Chief Financial Officer

**EXHIBIT A**  
**FACILITIES**

j:\par1204-003 hrg off-site water\dwg\figures\150305 par1204-003 overall facilities.dwg 3/5/2015 4:36 PM Deyan Ivanov

AURORA DRIVE

BUCKHORN STREET

8" PRV #122  
(2500 - 2370)

12" DIP DISCHARGE PIPELINE  
(2500 ZONE)

P-25 PUMPING STATION  
CAPACITY: 990 GPM AT 278 TDH

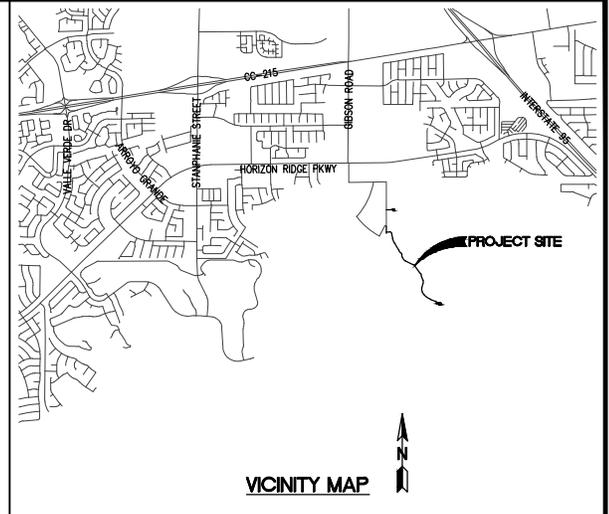
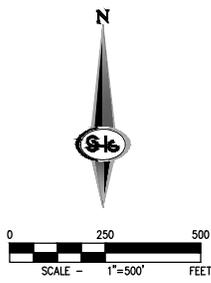
CONNECT NEW 16" DIP SUCTION  
PIPELINE TO EXIST. 42" CML&C  
(2240 ZONE)

CONNECT TO EXIST. 16" WATER

12" DIP INLET PIPELINE  
(2500 ZONE)

16" DIP OUTLET  
PIPELINE ( 2500 ZONE)

R-46 RESERVOIR  
SIZE: 0.4 MG



**S-I-G**  
**SLATER HANIFAN GROUP**  
 CONSULTING ENGINEERS & PLANNERS  
 5740 S. ARVILLE STREET #216, LAS VEGAS, NV 89118  
 PHONE (702) 284-5300 FAX (702) 284-5399

PARDEE HOMES OF NEVADA  
 P-25 PUMPING STATION, R-46 RESERVOIR AND PRV #122 FACILITIES  
 EXHIBIT A

DATE: 03/05/2015
DRAFTER: DSI
DESIGNER: DBH
CHECKED: DBH

PROJECT NO. KIVA 2006870130
<b>EX-A</b> SHEET 1 OF 1

**EXHIBIT B**  
**SPECIAL REFUNDING REPORT**