

TO: JAMES L. APP, CITY MANAGER  
FROM: ROBERT A. LATA, COMMUNITY DEVELOPMENT DIRECTOR *RAL*  
SUBJECT: AGREEMENT AFFECTING REAL PROPERTY (TURNER)  
DATE: MARCH 16, 1999

Needs: To take action on an Irrevocable Agreement to Participate in the Formation of an Assessment District for the Installation of Street Improvements and Covenant Running with the Land.

- Facts:
1. Parcel Map PR 97-115 was approved by the Planning Commission on August 12, 1997 via Resolution No. 97-039, which would divide a one acre single family lot into two half acre single family lots.
  2. The site is located on Gilead Lane east of Golden Hill Road.
  3. On May 12, 1998, the Planning Commission denied the applicant's request to amend parcel map PR 97-115, which would delete the conditions that require the applicant to dedicate and improve Gilead Lane as a collector street. The Commission did recommend to the City Council that provisions be made in the City's codes to defer costs of street improvements in conjunction with parcel maps, and that agreements to enter into/not protest formation of assessment districts and/or property liens be permitted as a form of security.
  4. On November 17, 1998 the City Council adopted an Ordinance No. 753 N.S., which amended the Municipal Code to allow the deferment of costs of street improvements in conjunction with parcel maps, and that agreement to enter into/not protest formation of an assessment district or property liens be permitted as a form of security. This deference would not remove the street improvement requirements but would delay the requirement for their installation.
  5. The Irrevocable Agreement to Participate in the Formation of an Assessment District for the Installation of Street Improvements and Covenant Running with the Land was noticed for the March 16, 1999, Agenda based on a request by Mr. David McCabe, on behalf of George W. Turner.
  6. Staff subsequently received verbal confirmation from Mr. David McCabe, acting on Mr. Turner's behalf, that they do not wish to go forward with the Agreement to Participate in the Formation of an Assessment District for the Installation of Street Improvements and Covenant Running with the Land at this time.

RIMC CODE:  
DATE:  
FILE PLAN/GE CAT:  
SUBJECT:  
LOCATION:  
RETENTION:

Community Development Department  
February 23, 1999  
Current Planning/Planned Developments  
Tract 2311& PD 98015 (CGC Enterprises) PC Report  
Development Services File Room  
Permanent

Analysis  
and

Conclusion: Mr. Turner does not wish to go forward with the agreement or with the recordation of Tentative Parcel Map PR 97-115 at this time. Therefore, no action should be take on this Irrevocable Agreement.. Condition No. 4, D-2 and D-5 of Resolution 97-039 of Tentative Parcel Map PR 97-115 (installation of street improvements on Gilead Lane) would have to be met prior to recordation of the final map for Parcel Map PR 97-115.

Policy

Reference: General Plan Land Use Element, Zoning Code and General Plan Noise Element

Fiscal

Impact: None

Options: After consideration of all public testimony:

- A. Receive and file the request to take no action on this item at this time.
- B. Amend, modify, or reject the above options.

Attachments:

1. Agreement Affecting Real Property

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

CITY CLERK'S OFFICE  
CITY OF EL PASO DE ROBLES  
1000 SPRING STREET  
PASO ROBLES, CA 93446

FOR RECORDER USE ONLY

**AGREEMENT AFFECTING REAL PROPERTY**

**APN NOS: 025-362-023**

**IRREVOCABLE AGREEMENT TO PARTICIPATE IN THE  
FORMATION OF AN ASSESSMENT DISTRICT FOR THE INSTALLATION  
OF STREET IMPROVEMENTS AND COVENANT RUNNING WITH THE LAND**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1999,  
by and between **George W. Turner** (herein collectively referred to as "**OWNER**") and the **CITY OF PASO  
ROBLES**, a political subdivision of the State of California, hereinafter referred to as "**CITY**".

**WITNESSETH:**

**A. WHEREAS, OWNER** is processing Tentative Parcel Map 97-115 with the **CITY** to create two half-acre single family residential parcels from a one-acre single family residential parcel (herein the "**PROJECT**") located in the **CITY** of El Paso de Robles, County of San Luis Obispo, State of California, which is more particularly described as follows (and herein referred to as the "Subject Property"):

*Being a subdivision of Lot 4 and a portion of lot 3 of Tract No. 1474, per Lot Line Adjustment PRAL 95-123, in the City of Paso Robles, County of San Luis Obispo, State of California.*

**B. WHEREAS, OWNER** is the record owner of the Subject Property more particularly described in Recital "A", above;

**C. WHEREAS, OWNER** is required as a condition of development, at **OWNER'S** sole expense, to install curb, gutter and sidewalk along the property frontage to City Standards and Specifications (herein the "Improvements") for Gilead Land as a condition precedent to the recordation of the final map. Improvements are further described in **Exhibit "A"**; and

D. WHEREAS, as an alternative to improving Gilead Lane at this time, OWNER has elected to enter into this irrevocable agreement and commitment to join and participate in an assessment district for the construction of improvements referenced in Recital "C", to be formed at a future date on the terms and conditions as stated in this Agreement;

E. WHEREAS, it is difficult to determine the amounts assessable for the costs of construction of the Improvements until such time that an assessment district is actually created. As used herein, the term "Cost of Construction" includes the actual cost of constructing the Improvement, along with administrative costs allowed by law; and

F. WHEREAS, the actual amount to be assessed for the Cost of Construction of the Improvements shall not exceed the proportionate special benefit to the property. Said proportional benefits shall be determined by the estimated costs of constructing the Improvements as determined by a registered civil engineer. In no event shall the actual amount levied against the Property exceed the amount identified in Exhibit "B" as adjusted pursuant to this agreement including reasonable administration costs.

G. WHEREAS, execution of this agreement by OWNER and CITY, and subsequent performance of its obligations by OWNER and his successors in interest will satisfy the requirement imposed as a condition of approval of said PROJECT.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. **Purpose of Assessment District.** The proceeds of the assessments to be levied against the Subject Property shall be used exclusively for the purpose of paying the Cost of Construction of the Improvements. The undersigned OWNER agrees that said Improvements are a special benefit to the Subject Property.
2. **Formation of Assessment District.** OWNER hereby irrevocably offers to join and participate in the formation of an assessment district or other proceeding for payment of the Cost of Construction of the Improvements to the Subject Property and all necessary appurtenances in connection therewith.
3. **Amount of Assessment.** The range of the assessment to be levied against the Subject Property to fund the Cost of Construction of the Improvements is described in Exhibit "B", attached hereto. The annual assessment to be charged and levied against the Subject Property during each fiscal year shall be determined by the CITY at the time of formation of the assessment district. The undersigned OWNER agrees

that the range of assessment established in Exhibit "B" does not exceed the estimated Cost of Construction of the Improvements for the Subject Property.

4. **CPI Adjustment to Amount of Assessment.** Commencing with the first fiscal year following the date of the approval of this Agreement by CITY, and each fiscal year thereafter, the range of assessment (Exhibit "B") to be levied against the Subject Property shall be increased in an amount necessary to reflect the increase in the Cost of Construction due to inflation. The determination of whether there has been an increase in the Cost of Construction of the Improvements, and the amount of the increase in the assessment shall be based exclusively on the percentage increase in CPI Index for Urban Wage Earners and Clerical Workers in San Francisco/San Jose for March 31 (CPI) of the current year over the previous year's index on the same date. The OWNER agrees that the foregoing CPI consumer price index reasonably reflects the likely increase in the cost of Improvements due to inflationary factors.

5. **Duration of Assessment.** The annual assessment to be levied against the Subject Property for the Cost of Construction of Improvements shall not be less than three years, and shall continue until such time as the Improvements are fully paid for. In the event the assessments levied and collected against the Subject Property exceed the Cost of Construction, the difference between the total amount collected and the Cost of Construction of Improvements shall be returned to the OWNER.

6. **Waiver of Right to Protest.** OWNER agrees, on behalf of himself and his successors in interest, to waive the right to file or present any oral or written protest against the establishment of an assessment district or other proceedings by the CITY to construct and install the Improvements.

7. **Ballot in Favor of Assessment District and Range of Assessments.** The undersigned OWNER executes this Agreement both as the OWNER'S irrevocable offer and commitment to participate in the formation of an assessment district to construct the Improvements, and the OWNER'S ballot in favor of the range of assessments to be charged or levied against the Subject Property. In addition, the undersigned OWNER hereby authorizes the CITY Clerk to file this Agreement as the undersigned's ballot in favor of the formation of the assessment district and the range of assessments as herein stated. See attached ballot, Exhibit "C".

8. **Hearing/Revocation Ballot.** The hearing on the undersigned OWNER'S ballot will be set concurrently with the CITY'S hearing on the approval of this Agreement, and at least forty-five (45) days from the date this Agreement/Ballot is filed with the CITY. The undersigned OWNER may revoke this Agreement/Ballot up to and including the time of the public hearing set by the CITY for approval of this

Agreement. A revocation of any portion of this Agreement/Ballot shall be considered a revocation of the entire Agreement/Ballot.

9. **Effect of Revocation.** In the event this Agreement/Ballot is revoked by OWNER pursuant to Section 8, above, then OWNER agrees to construct the Improvements as a condition to the issuance by CITY of a **final map recordation** for the PROJECT.

10. **Indemnification.** The OWNER, and his successors in interest, shall defend, indemnify and save harmless the CITY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, or liability occasioned by the performance or attempted performance of the provisions hereof, or in any way arising out of this Agreement, including, but not limited to, inverse condemnation, equitable relief, or any wrongful act or any negligent act or omission to act on the part of the OWNER or of agents, employees, or independent contractors directly responsible to the OWNER; providing further that the foregoing shall apply to any wrongful acts, or any actively or passively negligent acts or omissions to act, committed jointly or concurrently by the OWNER, the OWNER'S agents, employees, or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require the OWNER to indemnify the CITY against any responsibility of liability in contravention of Section 2782 of the Civil Code.

11. **Notices.** Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given shall be addressed as follows:

**CITY:** City of El Paso de Robles  
1000 Spring Street  
Paso Robles, CA 93446

**OWNER:** George W. Turner  
2916 Gilead Land  
Paso Robles, CA 93446

Provided that any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

12. **Validity of Other Agreements.** This Agreement is in addition to, and does not supersede, any other agreement or agreements entered into by and between the parties hereto.

13. **Invalidity.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

14. **Lien.** OWNER hereby agrees that the financial obligation for the Construction of Improvements as provided in this Agreement shall constitute a lien on the Subject Property. In the event the CITY determines not to form an assessment district to pay the Cost of Construction of the Improvements, OWNER hereby authorizes CITY to collect the Cost of Construction by whatever means are available to CITY, including placing the said costs on the property tax bill for the Subject Property. Upon collection of the Construction Costs, the CITY shall construct the Improvements. CITY shall give OWNER four months notice to construct the Improvements at OWNER'S sole expense, prior to exercising the remedies stated in this section.

15. **Term of Agreement and Termination.** This Agreement shall become effective on the date first above written and unless revoked pursuant to paragraph 9, above, shall remain in effect until terminated by the mutual written consent of the parties or the full payment and acceptance of the Improvements by CITY.

16. **Incorporation of Recitals.** Recitals A through G of this Agreement are incorporated herein by this reference and made a part hereof.

17. **Agreement to be Recorded.** OWNER and CITY intend and consent to the recordation of this Agreement in the office of the County Recorder of the County of San Luis Obispo.

18. **Successors and Assigns.** The CITY and OWNER agree that this Agreement and Covenants shall run with the land and shall be binding upon the OWNER, his/her heirs, successors, executors, administrators, and assigns and shall inure to the benefit of CITY and its successors and assigns.

19. **Entire Agreement.** This Agreement is freely and voluntarily entered into by the parties after having the opportunity to consult with their respective attorneys. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. The parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the OWNER and the CITY.

20. **Interpretation of This Agreement.** The parties acknowledge that each party and its attorney had the opportunity to review, negotiate and revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the obligations contemplated by this Agreement.

21. **Headings.** The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

22. **Waiver of Rights.** Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

23. **Authority to Execute Agreement.** The Parties hereby represent that the parties executing this Agreement are expressly authorized to do so for and on behalf of the Parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**OWNER(S):**

\_\_\_\_\_  
**George W. Turner**

**CITY:**

**CITY OF EL PASO DE ROBLES**

\_\_\_\_\_  
**Duane Picanco, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Madelyn Paasch, CITY Clerk**

**(SIGNATURES MUST BE NOTARIZED)**

darren/Pmaps/PR97-115/agreement form

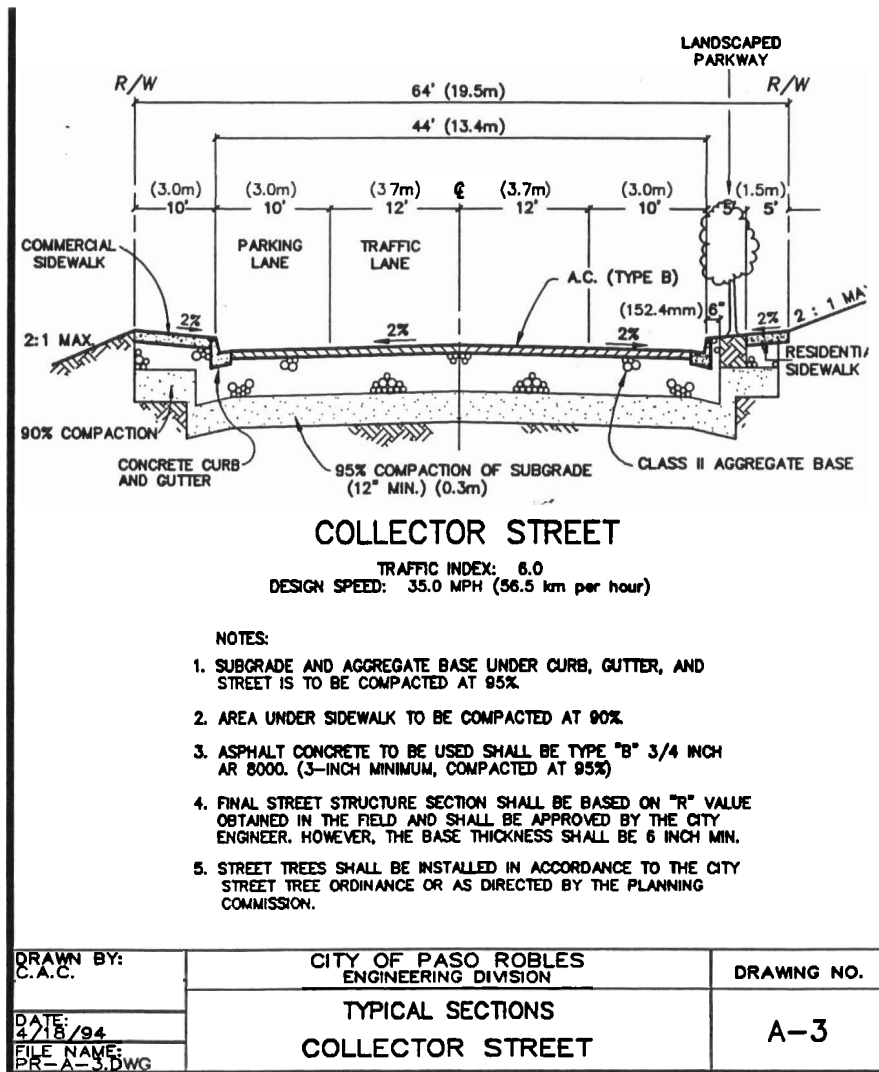


# EXHIBIT "A"

## Gilead Lane Description of Improvements for PR 97-115

Gilead Lane shall be improved with curb, gutter, and side walk along the applicant's property frontage to City Standards and Specifications ( A-3, as shown below). Gilead Lane has been identified as a collector street. Therefore, an additional 4-foot road dedication will be required along the property frontage.

DRAWING NO. A-3



## EXHIBIT "B"

### Gilead Lane Improvements for PR 97-115

<b>Curb &amp; Gutter</b>	290 LF @ \$10.00/LF	=	\$2,900
<b>Concrete Sidewalk</b>	1500 SF @ \$2.50/SF	=	\$3,750
<b>Landscaping &amp; Irrigation</b>	1500 SF @ \$1.00/SF	=	\$1,500
<b>Pavement</b>	3000SF @ \$2.00/SF	=	\$6,000
<b>Street Trees</b>	6 Ea. @ \$150/Ea.	=	\$900
<b>Streetlight</b>	1 Ea. @ \$2,000/Ea.	=	\$2,000
			<hr/>
	<b><i>TOTAL</i></b>	<b>=</b>	<b>\$17,050</b>
<b>10% Engineering Design</b>		<b>=</b>	<b>\$2,000</b>
<b>10% Contingency</b>		<b>=</b>	<b>\$2000</b>
			<hr/>
	<b>GRAND TOTAL</b>	<b>=</b>	<b>\$21,050</b>

**OFFICIAL BALLOT ( EXHIBIT "C" )**

**CITY OF EL PASO DE ROBLES SPECIAL PROPERTY OWNER PROTEST  
PROCEEDING TO PROPOSE THE LEVY AND COLLECTION OF ASSESSMENTS  
AND ASSESSMENT RANGE FORMULA FOR THE EL PASO DE ROBLES  
STREET IMPROVMENTS FOR GILEAD LANE**

**HEARING DATE:** \_\_\_\_\_

This Ballot represents:      **Name:**            George W. Turner  
   **Address:**        2916 Gilead Lane  
   **City, State:**   Paso Robles, CA 93446  
   **Property:**      A.P.N. 025-362-023  
   **Sub Area:**

According to Section 4, Sub-Section 4 (e) of Proposition 218, the ballots are weighted according to the proportional financial obligation of the affected property. The proposed assessment for your property is presented above and the total proposed Balance to Levy for the Sub Area is

To vote, make a cross (+) in the voting square next to the word "YES" or the word "NO", sign and date the ballot. If you wrongly mark, tear, or deface this ballot, return it to the City Clerk, and obtain another. Mail or deliver this completed ballot to:

City Clerk  
City of Paso Robles  
1000 Spring Street  
Paso Robles, CA 93446

**PLEASE CAST YOUR VOTE BY MARKING AND SIGNING BELOW**

<p><input type="checkbox"/> Yes, I approve of the proposed assessment of \$21,050.00, as adjusted, for the 1999-2000 fiscal year on the parcel(s) identified on this ballot, and the establishment of an annual assessment range formula based on the level of the Consumer Price Index most recently reported by the San Francisco/Oakland Urban Wage Earners and Clerical Workers increase over its level as of the date of this ballot.</p> <p><input type="checkbox"/> No, I do not approve the proposed assessment of \$21,050.00, as adjusted, for the 1999-2000 fiscal year on the parcel or parcels identified on this ballot, and the establishment of an annual assessment range formula based on the level of the Consumer Price Index most recently reported by the San Francisco/Oakland Urban Wage Earners and Clerical Workers increase over its level as of the date of this ballot.</p> <p>_____ Signature of Record Owner or Authorized Representative in case of property owned by non-individuals.</p> <p>_____ Date</p>
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