

TO: James L. App, City Manager

FROM: Robert A. Lata, Community Development Director

SUBJECT: Reimbursement Agreement for Sewer Lift Station and Appurtenances
Tract 2223-2, Bella Vista Estates, LLC

DATE: November 4, 2003

Needs: For the City Council to consider establishing a Reimbursement Agreement for the sewer lift station and appurtenances constructed with Tract 2223-2 by Bella Vista Estates, LLC.

- Facts:**
1. On August 26, 1996, the Planning Commission adopted Resolution 96-052 approving Tract 2223.
 2. In accordance with Condition of Approval No. 9 of Tract 2223 Bella Vista Estates, LLC has constructed a sewer lift station and appurtenances in order to provide sewer service to the subdivision. The lift station and appurtenances were accepted by the City for maintenance on July 2, 2002.
 3. The lift station provides sewer availability for the immediate area and thereby benefits other properties. Bella Vista Estates, LLC has requested that a reimbursement agreement be established in order for other properties to pay their share of the costs. The lift station and appurtenances qualify for reimbursement pursuant to Title 14, Section 14.08.070 M1b of the Municipal Code.
 4. The lift station and appurtenances and their costs are identified in the proposed Agreement as "Exhibit A - Lift Station Improvements".
 5. Those properties benefiting from the Lift Station Improvements have been identified in the proposed Agreement as "Exhibit B - Served Properties".

**Analysis
and
Conclusion**

The sewer lift station and appurtenances constructed by Bella Vista Estates, LLC, in Tract 2223 benefit surrounding properties by providing access to sewer thereby allowing these properties the opportunity for development.

The costs for the construction of the lift station and appurtenances provided by Bella Vista Estates, LLC, (Exhibit "A") have been reviewed and are recommended for acceptance. The map of "Served Properties" (Exhibit "B") accurately represents properties that will benefit from the construction of the lift station.

The method of determining the shares of cost of the construction of the lift station is fair and equitable to all properties shown on the map of "Served Properties"

Policy

Reference: Municipal Code Title 14, Section 14.080.07

Fiscal

Impact: No direct fiscal impact. A portion of the reimbursement fee will go to the City to cover its time to administer the agreement.

- Options:**
- a. Adopt the attached Resolution No. 03-xx establishing the Bella Vista Estates Lift Station Reimbursement and authorize the mayor to enter into an Agreement with Bella Vista Estates, LLC, for the City to collect the reimbursable amounts on behalf of the developer.
 - b. That the City Council amend, modify or reject the above option.

Attachments: (3)

- 1. Project Site
- 2. Resolution
- 3. Reimbursement Agreement

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES ESTABLISHING
REIMBURSEMENT FEES FOR THE CONSTRUCTION OF A SEWER LIFT STATION AND
APPURTENANCES BY BELLA VISTA ESTATES, LLC

WHEREAS, on August 26, 1996, the City Planning Commission adopted Resolution 96-052 approving Tract 2223; and

WHEREAS, in accordance with Condition of Approval No. 9 of Tract 2223, Bella Vista Estates, LLC has constructed a sewer lift station and appurtenances described in "Exhibit A - Lift Station Improvements" in order to provide sewer service to the subdivision. The sewer lift station and appurtenances were accepted for maintenance by the City Council on July 2, 2002; and

WHEREAS, the lift station and appurtenances constructed by Bella Vista Estates, LLC will provide sewer availability to, and will therefore benefit, other properties. Therefore the lift station and appurtenances qualify for reimbursement pursuant to Title 14, Section 14.08.070 M1b of the Municipal Code which provides that a developer of off-site sewer improvements is entitled to "A pro rata share of the cost of installing all sewer lines and appurtenances beyond the property line of installer where sewer lines are wholly outside the property of applicant and are subject to probable future use by connectors other than applicant"; and

WHEREAS, Bella Vista Estates, LLC has requested that a reimbursement agreement be established in order for other properties to pay their share of the costs of the sewer lift station and appurtenances, as such proportionate shares have been determined in a study prepared on behalf of Bella Vista Estates, LLC and approved by the City Engineer (the "Study");

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

SECTION 1. Based on the Study, the City Council finds as follows:

1. That the pro rata eligible amount of reimbursement to Bella Vista Estates, LLC is \$77,921.
2. That the real properties identified in "Exhibit B - Served Properties", are subject to probable future use of said lift station and appurtenances.
3. That the reasonable reimbursement charge for connection to the lift station for a single family residence is \$735.10. In order to reimburse the City for administration of the agreement the reasonable reimbursement charge for a single family residence is \$74. This charge is in addition to the reimbursement to Bella Vista Estates, for a total per unit reimbursement charge of \$809.10.
4. That the City will begin collecting these fees as each parcel connects into the sewer line.
5. That in accordance with Title 14, Section 14.08.070 M5b of the Municipal Code, this reimbursement shall expire (10) ten years from the date of the acceptance of the sewer main.
6. That the reimbursement charges approved by this Resolution are a "condition of development" and are therefore exempt from the guidelines and procedures of Proposition 218 (Article XIIIID Section 1(b) of the California Constitution).

SECTION 2. That the City Council hereby approves and authorizes the Mayor to execute a Reimbursement Agreement in substantially the form attached hereto as Exhibit C and incorporated herein by reference, subject to any minor technical and clarifying changes approved by the City Manager and City Attorney. The Reimbursement Agreement provides that City shall collect from those real properties identified in Exhibit "B" who connect to said sewer lift station the amount of \$809.10 per single family residence. These fees shall be collected at the time building permits are issued.

SECTION 3. The total aggregate amount to be paid to Bella Vista Estates, LLC, under the Reimbursement Agreement shall not exceed \$77,921.

SECTION 4. That pursuant to Title 14, Section 14.08.070 M5b of the Municipal Code, the City's obligation to collect reimbursements shall expire on July 2, 2012.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 4th day of November, 2003 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

RECORDING REQUESTED BY AND

WHEN RECORDED RETURN TO:

CITY ENGINEER

COMMUNITY DEVELOPMENT DEPT.

CITY OF EL PASO DE ROBLES

1000 SPRING STREET

PASO ROBLES, CA 93446

REIMBURSEMENT AGREEMENT

(Tract 2223-2 -- Bella Vista, Phase II)

THIS REIMBURSEMENT AGREEMENT (the "**Agreement**") is entered into this ____ day of _____, 2003, by and between the **CITY OF EL PASO DE ROBLES**, a municipal corporation (the "**City**"), and **BELLA VISTA ESTATES, LLC**, a _____ ("**Developer**").

Recitals

- A. **Developer** has developed Phase II of Tract No. 2223 (Tract 2223-2), commonly known as "**Bella Vista Estates**", consisting of 51 single-family residential lots, within the limits of the **City**.
- B. As a condition to the approval of the final map for Tract 2223, contained in Planning Commission Resolution No. 96-052, Condition No. 9, **Developer** has agreed to construct a lift station and force mains (the "**Lift Station Improvements**") that would serve not only Phase II of the development (Tract 2223-2), but also adjacent properties. Consequently, the Planning Commission recommended that **Developer** be reimbursed for the incremental increased cost for installing the Lift Station Improvements, as allowed by Title 14 of the Municipal Code.

- C. The City has determined that the installation of the Lift Station Improvements avoided increased costs and disruption of public service because they were integrally related to and coordinated with the development of Phase II of the development (Tract 2223-2).
- D. The City Council adopted Resolution No. ____-____ on _____ which established the eligible amount of reimbursement to Applicant in the amount of \$77,921. Said Resolution further established the real properties which are subject to probable future use of the sewer main and the amount to be collected from each individual property owners connection to the sewer line. Resolution ____-____ is attached hereto and is incorporated herein by reference.

Agreements

NOW, THEREFORE, THE CITY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

Section 1. Lift Station Improvements.

Developer has caused to be designed, constructed and installed the Lift Station Improvements. The Lift Station Improvements are more specifically described in Exhibit A, incorporated herein by reference, and are generally described as a lift station and force mains to serve the Phase II development and other properties to the south and to the west of Tract 2223-2. Those properties which are anticipated to be served by the Lift Station Improvements (the "Served Properties") are shown generally on the map attached hereto as Exhibit B, incorporated herein by reference.

Construction of the Lift Station Improvements has been undertaken and completed in accordance with the City's Sewer Master Plan, and approved by the Public Works Director.

Section 2. Plans; Permits.

Prior to the commencement of construction and installation of the Lift Station Improvements, **Developer** has caused to be prepared plans and specifications to the **City** for its approval. In addition, **Developer** has secured any and all permits as required by the **City** or any other governmental agency affected by such construction. **City** has provided all proper assistance to **Developer** in securing these permits.

Section 3. Insurance; Indemnification

Prior to the commencement of construction of the Lift Station Improvements, **Developer** has furnished, or caused to be furnished, to the **City** duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amounts specified by the **City**, naming the **City** as an additional insured. The policy limits of such policies may be in lesser amounts if **Developer** shall provide the **City** with duplicate originals or appropriate certificates of a binder (approved by the **City**) which indemnifies and holds the **City** harmless from and against all liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person, or to the property of any person, which shall occur on or adjacent to the construction site and which shall be directly or indirectly caused by any acts done thereon, or by any errors or omissions of **Developer** and its agents, servants, employees and contractors, and which provides for the defense of the **City** against all claims or causes of action arising therefrom. Such insurance policies have been maintained and kept in force, and such obligation to indemnify was continuous, during periods of construction of the Lift Station Improvements, and until **City** has approved and accepted the Lift Station Improvements.

Section 4. Nondiscrimination

Developer, for itself and its successors and assigns, agrees that in the construction of the Lift Station Improvements, **Developer** did not and will not discriminate, and will not permit its contractors and subcontractors to discriminate, against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

Section 5. Reimbursement for the Lift Station Improvements.

In consideration of the undertakings of **Developer** under Section 1 of this **Agreement**, **City** agrees to reimburse, or cause to be reimbursed, to **Developer** a portion of the costs actually incurred by **Developer** for construction of the Lift Station Improvements (the "Reimbursement Amount"). The Reimbursement amount shall be determined as set forth below.

The costs actually incurred by **Developer** for construction of the Lift Station Improvements (the "**Developer's Costs**") shall be determined based upon evidence submitted by the **Developer**. Upon completion of the Lift Station Improvements, **Developer** shall submit to the **City** documentation reasonably satisfactory to the **City** evidencing the cost of the Lift Station Improvements.

Following a determination of the **Developer's Costs**, the **City** and **Developer** shall meet and confer in order for the **City** to determine the Reimbursement Amount to be paid to **Developer**, and the amount of fees to be charged by the **City** for future connections to the sewer facilities and use of the Lift Station Improvements and paid to the **Developer** (the "Reimbursement Fees"). The Reimbursement Amount and Reimbursement Fees shall be based on an allocation of the **Developer's Costs** to all of the units developed or to be developed on the Served Properties.

The **City** shall establish a reimbursement account for **Developer** and, upon receipt of the Reimbursement Fees from developers of the Served Properties, such amounts shall be deposited into the **Developer's** reimbursement account. All

Reimbursement Fees credited to **Developer's** reimbursement account shall be disbursed to **Developer** on a semi-annual basis; provided in no event shall the total aggregate amount of Reimbursement Fees paid to **Developer** exceed the total Reimbursement Amount to be determined as set forth above in this Section 5.

Notwithstanding the foregoing, **Developer** acknowledges and agrees that payment by the **City** of all or any portion of the Reimbursement Amount is conditioned solely on the **City's** receipt of Reimbursement Fees for future connections to the sewer facilities. **City** shall have no obligation to pay any amounts to **Developer**, except to the extent that Reimbursement Fees are actually collected by **City** from owners and/or developers of the Served Properties.

Section 6. Compliance with Law.

Developer states that they have complied with all laws applicable to the construction of the improvements and work to be completed as described in this Agreement.

Section 7. Termination of this Agreement.

This Agreement and the obligations of **Developer** and the **City** hereunder shall terminate upon the earlier to occur of:

- a. Payment by the **City** of the full Reimbursement Amount; or
- b. Ten (10) years from the date of acceptance by the **City** of the Lift Station Improvements.

Section 8. Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by any party for a breach of this Agreement or to enforce any provision herein, the prevailing

party in such action shall be entitled to reasonable attorneys' fees and such other costs as may be determined by a court of competent jurisdiction.

IN WITNESS WHEREOF, **Developer** and the **City** have executed this **Agreement** as of the date first above written.

CITY:

CITY OF EL PASO DE ROBLES,
a municipal corporation

By _____
Frank R. Mecham, Mayor

Approved as to Form:

Attest:

By: _____
Iris P. Yang
City Attorney

By: _____
Sharilyn M. Ryan
Deputy City Clerk

DEVELOPER:

FRANK ARCIERO & SONS,
a Frank Arciero

By: Frank Arciero

Its: President

[Signatures Must be Notarized]

EXHIBIT A







LIFT STATION IMPROVEMENTS

Wet well & duplex pumps	\$49,600.00
Force main and tie into ex manhole	17,500.00
Tesco control system	35,500.00
Generator w/ controls	28,500.00
Fence	8,500.00
Paving access road	14,300.00
Engineering design	5,000.00
Conduit for electrical	1,500.00
Utilities (consumption)	1,200.00
Supervision	7,200.00
Property	25,000.00
Interest (8%, 15 months)	<u>19,380.00</u>
Total	\$213,180.00

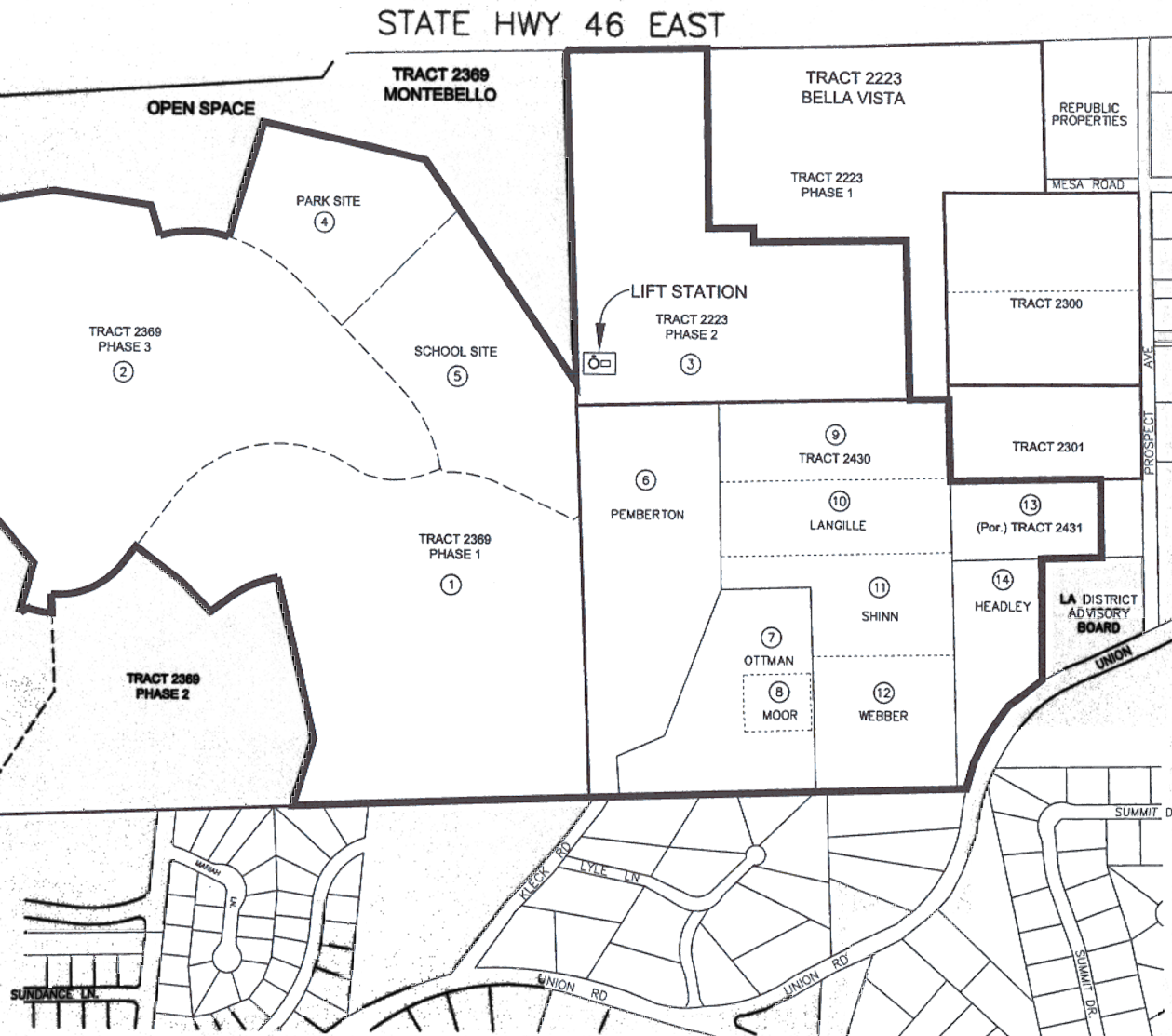
EXHIBIT B

MAP OF PROPERTIES TO BE SERVED BY LIFT STATION IMPROVEMENTS

LEGEND

-  REIMBURSEMENT AREA
-  SUBDIVISION BOUNDARY
-  SUBDIVISION PHASE
-  LOT LINES
-  PROPERTY NUMBER
-  LIFT STATION

NCE NORTH COAST ENGINEERING INC.
255 S. Street Rd Suite 6, Paso Robles, CA 93426



SERVED PROPERTIES LIFT STATION IMPROVEMENTS REIMBURSEMENT AREA PASO ROBLES LIFT STATION #3

TRIBUTARY - PARTICIPATING		
MAP #	PROPERTY IDENTIFICATION	RESIDENTIAL LOTS OR EQUIVALENT
④	TRACT 2369 Future Park Site	1
⑤	TRACT 2369 Future School Site	14
⑥	APN 025-402-001 Pemberton, Margaret	18
⑦	APN 025-402-022 Ottman, Philip A., Heirs to	13
⑧	APN 025-402-023 Moor, Alira L. Trust	1
⑨	APN 025-402-066 TRACT 2430	9
⑩	APN 025-402-065 Langille, Conrad c/o North County Realty	10
⑪	APN 025-402-004 Shinn, Lorraine M.	12
⑫	APN 025-402-003 Webber, Cris A. & Barbara D.	10
⑬	APN 025-402-025 Chivens, Daniel P. & Krystalyn D.	9
⑭	APN 025-402-008 Headley, Robert L. & Claire T.	9
TRIBUTARY - NON-PARTICIPATING		
MAP #	PROPERTY IDENTIFICATION	RESIDENTIAL LOTS OR EQUIVALENT
①	TRACT 2369 Montebello Phase 1	71
②	TRACT 2369 Montebello Phase 3	62
③	TRACT 2223 Bella Vista Phase 2	51

SERVED PROPERTIES
LIFT STATION IMPROVEMENTS
REIMBURSEMENT AREA
PASO ROBLES LIFT STATION #3