

TO: James L. App, City Manager
FROM: Doug Monn, Director of Public Works
SUBJECT: Reimbursement Agreement for Sewer Line
21st Street, Bertoni
DATE: November 7, 2006

Needs: For the City Council to consider establishing a Reimbursement Agreement for the sewer line constructed in 21st Street, from west of Olive Drive to the boundary of Tract 2521, 500 feet west of Almond Springs Drive.

- Facts:**
1. On February 24, 2004, the Planning Commission tentatively approved Tract 2521 subject to the condition that the City sewer be extended to the subdivision in 21st Street.
 2. John Bertoni, owner of Tract 2521, has completed the sewer line in 21st Street in accordance with plans approved by the City Engineer.
 3. The sewer line provides sewer availability for other properties along 21st Street. John Bertoni has requested that a reimbursement agreement be established in order for other properties to pay their share of the costs. The sewer line and appurtenances qualify for reimbursement pursuant to Title 14, Section 14.08.070 M1b of the Municipal Code.
 4. The sewer line, appurtenances and their costs are identified in the proposed Agreement as “Exhibit A – Sewer Line Improvements”.
 5. Those properties benefiting from the Sewer Line Improvements have been identified in the proposed Agreement as “Exhibit B - Served Properties”.

**Analysis
and
Conclusion**

The sewer line and appurtenances constructed by John Bertoni on 21st Street benefit surrounding properties by providing access to sewer.

The costs for the construction of the sewer line and appurtenances provided by John Bertoni has been reviewed and is recommended for acceptance. The “Sewer Line Improvements” (Exhibit “A”) accurately represents properties that will benefit from the construction of the sewer line.

The method of determining the shares of cost of the construction of the sewer line is fair and equitable to all properties as shown on “Exhibit B - Served Properties”.

**Policy
Reference:** Municipal Code Title 14, Section 14.080.07

**Fiscal
Impact:** None

- Options:**
- a. Adopt the attached Resolution No. 06-xxx establishing the 21st Street Sewer Reimbursement and authorize the Mayor to enter into an Agreement with John and June Bertoni 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: (2)

1. Resolution
2. Reimbursement Agreement including Exhibit A – Project Sewer Line Improvements and Exhibit B – Served Properties

RESOLUTION NO. 06-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES ESTABLISHING REIMBURSEMENT FEES FOR THE CONSTRUCTION OF A SEWER LINE AND APPURTENANCES IN 21ST STREET (BERTONI)

WHEREAS, on February 24, 2004, the Planning Commission tentatively approved Tract 2521 subject to the condition that the City sewer be extended to the subdivision in 21st Street; and

WHEREAS, in accordance with Municipal Code policy, John Bertoni has constructed a sewer line and appurtenances described in “Exhibit A – Sewer Line Improvements” in order to provide City sewer service to Tract 2521; and

WHEREAS, the sewer line and appurtenances constructed by John Bertoni will provide sewer availability to, and will therefore benefit, other properties. Therefore the sewer line 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, John Bertoni has requested that a reimbursement agreement be established in order for other properties to pay their share of the costs of the sewer line and appurtenances, as such proportionate shares have been determined by the City Engineer;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS

SECTION 1. Based on the staff report prepared by the City Engineer, the City Council finds as follows:

1. That the pro rata eligible amount of reimbursement to John and June Bertoni is \$25,125.
2. That the real properties identified in “Exhibit B - Served Properties”, are subject to probable future use of said sewer line and appurtenances.
3. That the reasonable reimbursement charge for connection to the sewer line for a single family residence within the boundaries of Parcel Map PR 01-102 on Villa Lane is \$12,750 per residential unit and \$6,095 for those parcels in Tract 1215 that front on 21st Street.
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 XIII D 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 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 the City shall collect from those real properties identified in Exhibit “B” who connect to said sewer line the amount of \$12,750 per single family

residential unit within the boundaries of Parcel Map PR 01-102 on Villa Lane and \$6,095 per residential unit for those properties in Tract 1215 that front on 21st Street. These fees shall be collected at the time building permits are issued.

SECTION 3. The total aggregate amount to be paid to John and June Bertoni, under the Reimbursement Agreement shall not exceed \$68,725.

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 November 7, 2016.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 7th day of November, 2006 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah D. Robinson, 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

THIS **REIMBURSEMENT AGREEMENT** (the “**Agreement**”) is entered into this 7th day of November, 2006, by and between the **CITY OF EL PASO DE ROBLES**, a municipal corporation (the “**City**”), and **John and June Bertoni**, (“**Developer**”).

Recitals

- A. **Developer** has constructed improvements in Tract 2521 on 21st Street, within the limits of the **City**.
- B. In accordance with Municipal Code policy, **Developer** has constructed a sewer line that would serve not only his development, Tract 2521, but also adjacent properties. In accordance with Title 14 of the Municipal Code, the **Developer** has requested reimbursement for the proportional shares of cost for installing the sewer line.
- C. The **City** has determined that the installation of the sewer line will benefit adjacent properties on 21st Street.
- D. The City Council adopted Resolution No. 06-xxx on November 7, 2006 which established the eligible amount of reimbursement to Applicant in the amount of \$68,725. 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 No. 06-xxx is attached hereto and is incorporated herein by reference.

SewerReimbursementAgreementBertoni21st Street11-7-06.DOC

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Agreements

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

Section 1. Sewer Line

Developer has caused to be designed, constructed and installed the sewer line Improvements. The sewer line is more specifically described in Exhibit A, incorporated herein by reference, and are generally described as a sewer line needed to serve properties along 21st Street from 300 feet west of Olive Street to Tract 2521, 500 feet west of Almond Springs Drive. Those properties which are anticipated to be served by the sewer line (the “**Served Properties**”) are shown generally on the map attached hereto as Exhibit B, incorporated herein by reference.

Construction of the sewer line has been undertaken and completed in accordance with the **City’s** Sewer Master Plan, and approved by the City Engineer.

Section 2. Plans; Permits

Prior to the commencement of construction and installation of the sewer line, **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 sewer line, **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 sewer line, and until **City** has approved and accepted the sewer line.

Section 4. Nondiscrimination

Developer, for itself and its successors and assigns, agrees that in the construction of the sewer line, **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 Sewer Line

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 sewer line (the “**Reimbursement Amount**”). The **Reimbursement Amount** shall be determined as set forth below.

The costs actually incurred by **Developer** for construction of the sewer line (the “**Developer’s Costs**”) shall be determined based upon evidence submitted by the **Developer**. Upon completion of the sewer line, **Developer** shall submit to the **City** documentation reasonably satisfactory to the **City** evidencing the cost of the sewer line.

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 sewer line 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 sewer line.

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:
By Iris P. Yang, City Attorney

Attest:

By: _____
Deborah D. Robinson
Deputy City Clerk

DEVELOPER:

By: _____
John Bertoni

By: _____
June Bertoni

[Signatures Must be Notarized]

EXHIBIT A

PROPERTIES TO BE SERVED BY
SANITARY SEWER LINE IMPROVEMENTS
REIMBURSEMENT AREA

Assessor Parcel Numbers	Property Identification	UNITS/SHARES
APN 008-151-051	2205 Villa Lane	1
APN 008-151-052	2211 Villa Lane	1
APN 008-151-053	2217 Villa Lane	1
	Total Shares	3

Total Cost \$38,250 ÷ 3 Shares = 12,750 per unit

Assessor Parcel Numbers	Property Identification	UNITS/SHARES
APN 008-431-018	21 st Street	1
APN 008-431-019	Almond Springs Drive	1
APN 008-431-020	Almond Springs Drive	1
APN 008-431-021	21 st Street	1
APN 008-431-022	21 st Street	1
APN 008-431-053-061	Tract 2521	9
	Total Shares	14

Total Cost \$85,329 ÷ 14 Shares = 6,095 per unit

Maximum amount of reimbursement = \$68,725

EXHIBIT B

MAP OF PROPERTIES TO BE SERVED BY
SANITARY SEWER LINE IMPROVEMENTS

008-15

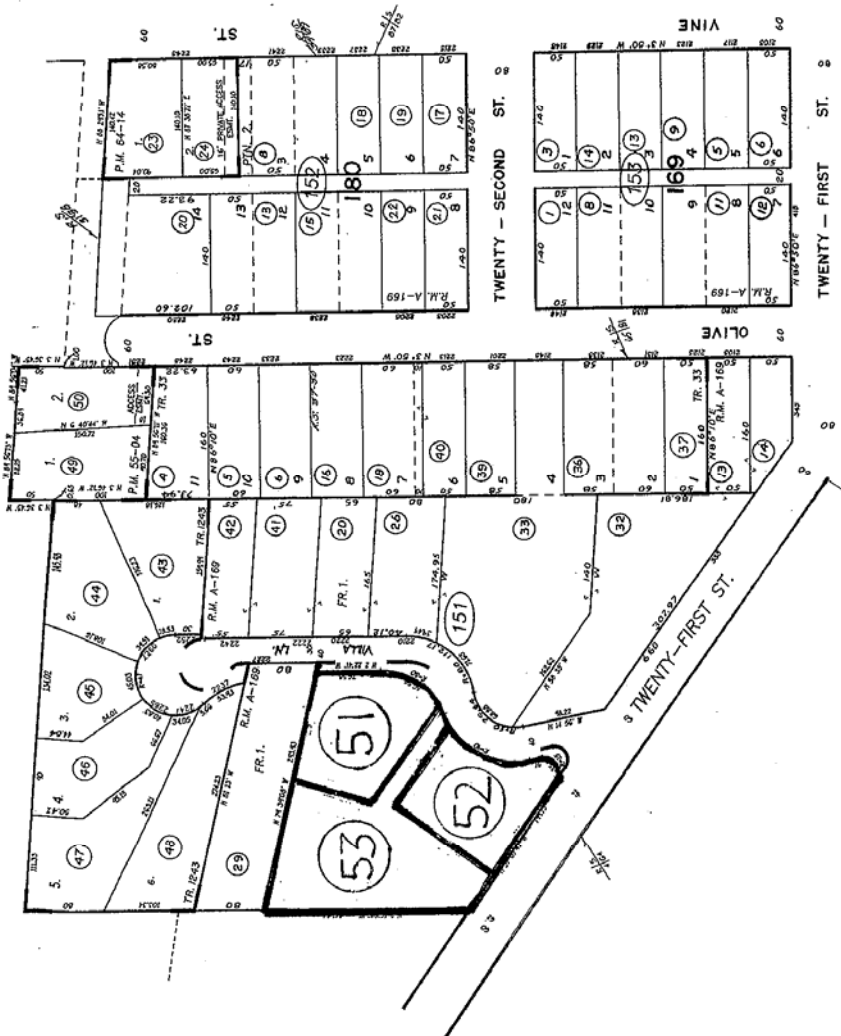


EXHIBIT B

MAP OF PROPERTIES TO BE SERVED BY
SANITARY SEWER LINE IMPROVEMENTS

