

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Reimbursement for Installation of a Water Line in Dry Creek Road;
(Nunno)
DATE: June 17, 2008

Needs: That the City Council consider authorization of reimbursement to the developer of PD 01-030, Mike Nunno, for the installation of a water line in Dry Creek Road.

- Facts:**
1. On February 22, 2005, the Planning Commission adopted Resolution 05-020 approving PD 01-030.
 2. As a Condition of Approval of PD 01-030 the developer was required to install a 16-inch water main along the frontage of the property in Dry Creek Road.
 3. In accordance with the provisions of the Municipal Code, a developer may request a reimbursement from the City for over-sizing a water main extension needed to serve his development.
 4. The water line referenced above is complete to the satisfaction of the Water Division and is currently operating.
 5. The developer, Mike Nunno, has provided information demonstrating that the total cost of over-sizing the Dry Creek Road water line is \$16,135.

**Analysis
and
Conclusion**

The developer of PD 01-030, Mike Nunno, needed to extend a water main to serve his project at 3500 Dry Creek Road. In accordance with City standards, the minimum size of a water main is 8-inch. The City's Water Master Plan indicates the need for a 16-inch water main in Dry Creek Road. Rather than leaving the City with the need to build a parallel line at a subsequent date, the City Engineer asked Nunno to build a 16-inch line where reimbursement for over-sizing the line would be available in accordance with the provisions of the Municipal Code.

Information submitted by Mike Nunno has been reviewed by the City Engineer. The cost of over-sizing the water main in Dry Creek Road from 8-inch to 16-inch has been demonstrated to be \$16,135.

Policy

Reference: Municipal Code Section 14.04.040A

Fiscal

Impact: Expenditure of \$16,135 from the water enterprise fund.

Options:

- a. Adopt Resolution No. 08-xxx authorizing a reimbursement to Mike Nunno, developer of PD 01-030 for the cost of over-sizing the 16-inch water main in Dry Creek Road in the amount of \$16,135.
- b. That the City Council amend, modify or reject the above option.

Attachments: (2)

1. Letter from A-Jay Excavating, Inc.
2. Reimbursement Agreement
3. Resolution

A-JAY EXCAVATING, INC.

Ph. (805) 466-0300 Fax (805) 466-1259

FAX TRANSMITTAL

From the desk of
Ted W. Maino

Date: October 2, 2007

To: Mike Nunno
Company Name: Nunno Corporation

Fax #: 238-0648

Pages faxed (including this Cover Sheet): 2

If you do not receive the number of pages stated above, please call immediately.

Re; Nunno Industrial Park, Dry Creek Rd. Paso Robles

Mike,

Per you request, we have calculated the cost difference between an 8-inch waterline and the installed 16-inch waterline in Dry Creek Road. Attached is the scope of work that would be affected by such a change. The cost difference between an 8-inch and 16-inch waterline is:

	<u>8-inch</u>	<u>16-inch</u>
Labor	2,056.00	2,661.00
Materials <i>Per fittings</i>	7,106.00	21,448.00
Equipment	<u>783.00</u>	<u>1,971.00</u>
TOTAL	9,945.00	26,080.00

COST DIFFERENCE **\$16,135.00**

As you can see, the primary cost difference is materials and the use of a second backhoe to handle the placement of the larger pipe.

If you have any questions or I can be of further service, please give me a call.

Best regards,



Ted W. Maino
Estimator

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
(Water Line 3500 Dry Creek Road -- Nunno)

THIS REIMBURSEMENT AGREEMENT (the "Agreement") is entered into this ___ day of _____, 2008, by and between the **CITY OF EL PASO DE ROBLES**, a municipal corporation (the "City"), and Nunno LLC (hereinafter referred to as "Owner").

Recitals

- A. **Owner** is in the process of developing the property known as 3500 Dry Creek Road (APN 025-436-032) within the limits of the **City**.
- B. As a condition to the approval of Planned Development PD 01-030, contained in Planning Commission Resolution No. 05-0020, Condition No. 13, **Owner** has agreed to construct a new 16-inch water line in Dry Creek Road. In accordance with Municipal Code Section 14.04.40 the City shall bear the cost of the size of the water line over and above an 8-inch pipeline.
- C. Construction of the 16-inch water main in conjunction with the development of 3500 Dry Creek Road has allowed the City to avoid increased costs and disruption of public services.

- D. The City Council adopted Resolution No. __-__ on _____ which established the eligible amount of reimbursement to Applicant in the amount of up to \$16,135 Resolution ____-__ is attached hereto and is incorporated herein by reference.

Agreements

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

Section 1. Water Main.

Owner has caused to be designed, constructed and installed the 16-inch water main along the frontage of 3500 Dry Creek Road. The water main is shown on Exhibit "A".

Construction of the water main has been undertaken and completed in accordance with the City's Water Master Plan, and approved by the Director of Public Works.

Section 2. Plans; Permits.

Prior to the commencement of construction and installation of the water line, **Owner** has caused to be prepared plans and specifications to the **City** for its approval. In addition, **Owner** 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 **Owner** in securing these permits.

Section 3. Insurance; Indemnification

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

Section 4. Nondiscrimination

Owner, for itself and its successors and assigns, agrees that in the construction of the water line, Owner 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 Water Line.

In consideration of the undertakings of Owner under Section 1 of this Agreement, City agrees to reimburse, or cause to be reimbursed, to Owner costs for the 16-inch water pipeline materials over and above the cost of similar 8-inch water pipeline materials (the "Reimbursement Amount").

The costs actually incurred by Owner for installation of the water line (the "Owner's Costs") shall be determined based upon evidence submitted by the Owner. Upon completion of the 16-inch water line, Owner shall submit to the City documentation reasonably satisfactory to the City evidencing the cost of the 16-inch water pipeline materials.

Following a determination of the Owner's Costs, the City and Owner shall meet and confer in order for the City to determine the Reimbursement Amount to

be paid to **Owner**. The Reimbursement Amount shall be based on the difference between the cost of 16-inch water pipeline materials and 8-inch water pipeline materials.

Section 6. Compliance with Law.

Owner 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 **Owner** and the **City** hereunder shall terminate upon the payment by the **City** of the full Reimbursement Amount.

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, **Owner** and the **City** have executed this **Agreement** as of the date first above written.

CITY:

CITY OF EL PASO DE ROBLES,
a municipal corporation

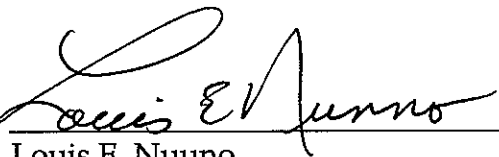
By: _____
Frank R. Mecham, Mayor

Attest:

By: _____
Deborah D. Robinson
Deputy City Clerk

OWNER:

NUNNO LLC

By:  _____
Louis E. Nuuno

[Signatures Must be Notarized]

ACKNOWLEDGMENT

State of California }
County of San Luis Obispo } ss.

On May 8, 2008, before me, Sandrea Lee Rudesal, Notary Public
(here insert name and title of the officer)

personally appeared Louis E. Nunno
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature Sandrea Lee Rudesal



(Seal)

ACKNOWLEDGMENT

State of _____ }
County of _____ } ss.

On _____, before me, _____
(here insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGMENT

State of _____ }
County of _____ } ss.

On _____, before me, _____
(here insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____

(Seal)

RESOLUTION NO. 08-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF PASO ROBLES AUTHORIZING REIMBURSEMENT FOR THE
CONSTRUCTION OF A WATER LINE IN DRY CREEK ROAD (NUNNO)

WHEREAS, on February 22, 2005, the City Planning Commission adopted Resolution 05-020 approving PD 01-030 located at 3500 Dry Creek Road; and

WHEREAS, in accordance with Condition of Approval No. 13 of PD 01-030, Mike Nunno has constructed a 16-inch water line as shown in Exhibit "A" in accordance with the City Water Master Plan; and

WHEREAS, Nunno has requested reimbursements from the City pursuant to Title 14, Section 14.04.040 A of the Municipal Code; and

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. Based on the staff report prepared by the City Engineer, the City Council approves a one-time budget appropriation in the amount of \$16,135 from the City's Water Enterprise Fund to Budget Account No. 220-910-5452-786 to reimburse Mike Nunno for the over-sizing of a 16-inch water line in Dry Creek Road in accordance with the City's Water Master Plan and based upon documentation provided by Nunno.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 17th day of June, 2008 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah D. Robinson, Deputy City Clerk