

**TO:** James L. App, City Manager  
**FROM:** Ed Gallagher, Community Development Director  
**SUBJECT:** Reimbursement for Cuesta College Frontage Improvements  
**DATE:** April 1, 2014

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**Needs:** For the City Council to authorize a reimbursement to Ayres Paso Robles, LTD., developer of PD 12-001, for the installation of curb, gutter and sidewalk improvements along the frontage of Cuesta College property on Buena Vista Drive.

- Facts:**
1. On July 17, 2012, the City Council adopted Resolution No. 12-115 approving Planned Development 12-001, a resort hotel submitted by Doug Ayres on behalf of Ayres Paso Robles, LTD.
  2. The Ayres Hotel is under construction adjacent to College property on Buena Vista Drive. Ayres will be constructing improvements along their frontage of Buena Vista Drive from Experimental Station Road to their north boundary (their common boundary with the College).
  3. Currently, there are no plans to finish the improvements along the College frontage between the Ayres property and Dallons Drive.
  4. The transportation section of the Needs List of the AB 1600 impact fee program includes a line item for the construction of improvements to Buena Vista Drive adjacent to the frontage of Cuesta College.
  5. Transportation impact fees generated by the development of the Ayres Hotel can be used to complete the improvements along the Cuesta College frontage.

**Analysis &  
Conclusion:**

The Ayres Hotel project will generate substantial revenue in the form of transportation impact fees. Based upon the Council's support of inclusion of Cuesta College frontage improvements on the AB 1600 Needs List, a portion of these funds could be used to finish Buena Vista Drive curb, gutter and sidewalk improvements between the Ayres frontage and Dallons Drive.

There is no obligation for Ayres to assist or cooperate with the City in this effort. The conditions of approval of the Planned Development provide for reimbursement if Buena Vista improvements are extended to Dallons Drive. Ayres' contractor has provided an estimate of cost for the College frontage improvements. We have prepared a draft reimbursement agreement for Council's consideration.

**Policy**

**Reference:** 2003 General Plan; 2006 Council Goals; AB 1600; 2011 Circulation Element

**Fiscal**

**Impact:**

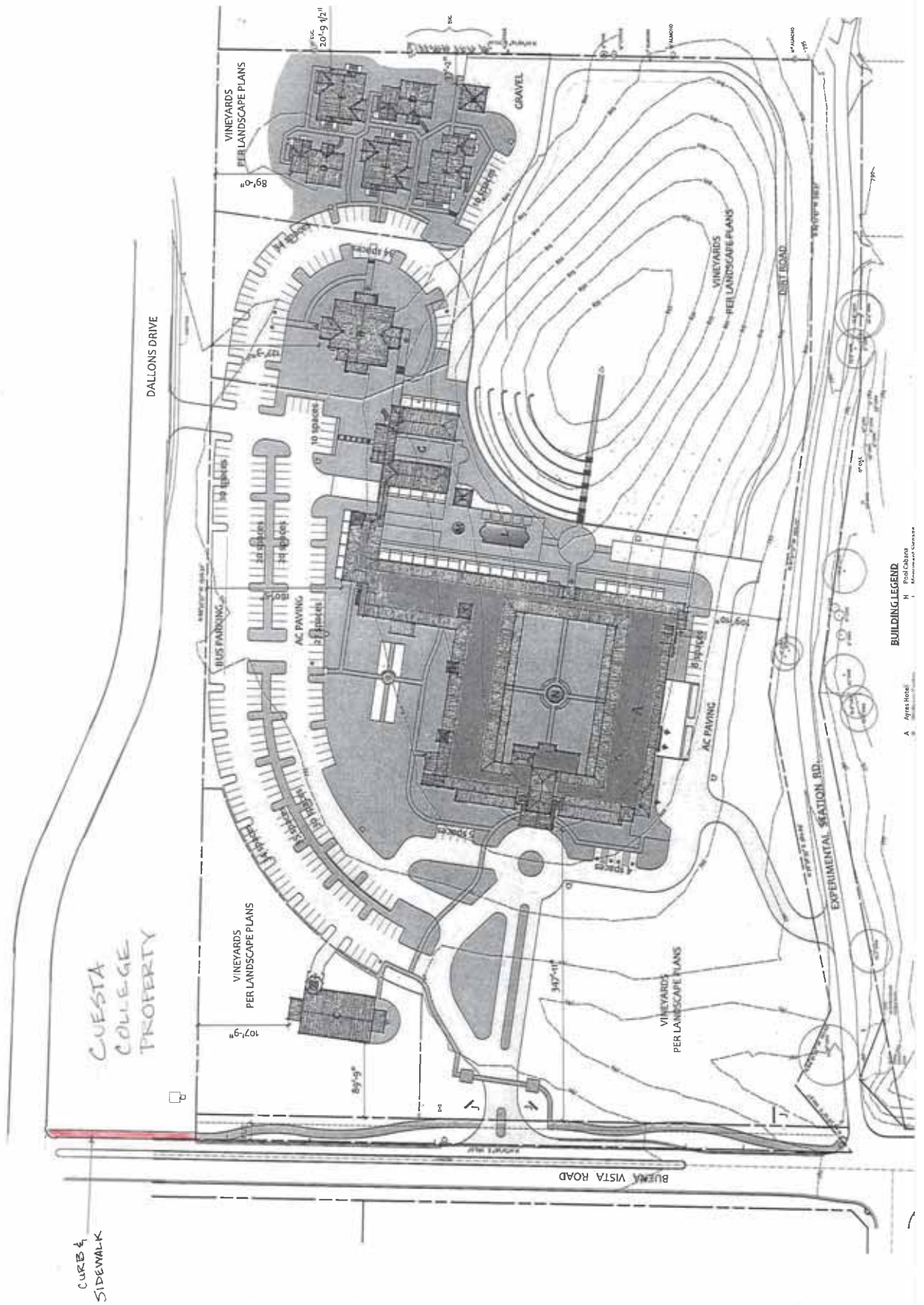
The preliminary cost estimate for improvements to Buena Vista Drive along Cuesta College frontage by Ayres forces, reimbursable to Ayres, is \$150,000. The cost of the improvements can be covered by development impact fees generated by Ayres' hotel development. The hotel is estimated to bring in \$444,104 in transportation impact fees.

**Options:**

- a. Adopt Resolution 14-xxx authorizing the Mayor to enter into an Agreement with Ayres Paso Robles, LTD. To reimburse their cost of installation of street improvements along the frontage of Cuesta College property along Buena Vista Drive from the Ayres property to Dallons Drive.
- b. Amend, modify or reject the above option.

**Attachments:**

- (1) Site plan
- (2) Reimbursement Agreement
- (3) Resolution



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 \_\_\_\_\_ 2014, by and between the City of El Paso de Robles, a California municipal corporation (the "City") and Ayres Paso Robles, LTD (the "Developer"), an Owner, individually referred to herein as a "party" and collectively referred to as the "parties."

RECITALS

- A. The Developer owns certain real property in the City, located at 2700 Buena Vista Drive (the "Ayres Property").
- B. As a condition of approval of the development of the Ayres Property, the Developer is required to install a curb, gutter, sidewalk and paving along the frontage of their property along Buena Vista Drive from Experimental Station Road to the north boundary of the Ayres property.
- C. The north boundary of the Ayres property is in common with the south boundary of the Cuesta College property. The City desires to complete the curb, gutter, sidewalk and paving improvements along the frontage of the Cuesta College property to Dallons Drive.
- D. The City will reimburse the Developer for the costs associated with installation of curb, gutter, sidewalk and paving along the Cuesta College property frontage from the north boundary of the Ayres property to Dallons Drive.
- E. The City has found that the execution and fulfillment generally of this Agreement is in the vital and best interests of the City and the health, safety and welfare of the residents of the City and in accord with the public purposes and provisions of the applicable federal, state and local laws and requirements.

NOW, THEREFORE, the parties agree as follows:

## AGREEMENT

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals, and in the preamble preceding the recitals, are hereby incorporated into this Agreement as if set forth in full.
2. Installation of Improvements. The curb, gutter, sidewalk and paving shall be installed in accordance with the plans and specifications prepared by North Coast Engineering, Inc., submitted and approved by the City Engineer on March xx, 2014, or any revisions of these plans as approved by the City Engineer.
3. Nondiscrimination. The Developer, for itself and its successors and assigns, agrees that in the construction of the Buena Vista Drive improvements, the Developer shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.
4. Prevailing Wages. The Buena Vista Drive improvements is a public work within the meaning of Part 7 of Division 2 of the California Labor Code (Sections 1720 and following) the (“Prevailing Wage Law”), and the Developer, any contractor, and any subcontractor, shall pay not less than the specified prevailing rates of wage to all workmen employed in connection with the installation of the improvements. It shall be the responsibility of the Developer to ensure that each contractor and subcontractor hired to perform work, in connection with the improvements, comply with the requirements of this Section 5, and all other applicable requirements of the prevailing wage law.

Pursuant to the provisions of Section 1770 of the Labor Code of the State of California, the City Council of the City of Paso Robles has obtained the general prevailing rate of wages and employer payments for health and welfare, vacation, pension and similar purposes in the City, a copy of which is on file in the office of the City Engineer, and shall be made available for viewing to any interested party upon request.

5. Conditions of Reimbursement. The Developer hereby warrants that it has prepared and submitted plans and specifications for the Buena Vista Drive improvements to the City for City's approval, and has secured, or will secure, any and all permits required by the City or any other governmental agency affected by construction of the improvements. The Developer shall, at its sole cost and expense, design, construct and install the Buena Vista Drive improvements, described more fully in Section 2, above. All of the following are conditions which must be satisfied before the City will reimburse the Developer for any portion of the cost of the improvements:
  - 5.1 All costs for design, construction, and installation of the Buena Vista Drive improvements shall be fully paid by the Developer, and Developer shall obtain lien releases or waivers satisfactory to the City, before Developer shall be entitled to any reimbursement.

- 5.2 The Buena Vista Drive improvements shall be completely installed, shall have received all necessary final inspections by the City before the Developer shall be entitled to any reimbursement.
- 5.3 The City shall reimburse the Developer for reasonable third-party costs actually expended by the Developer for the purpose of design, construction and installation of the Buena Vista Drive improvements. The City shall not reimburse the Developer for unreasonable costs, as determined by the City, or costs which the Developer would not otherwise have incurred but for the negligence or willful misconduct of the Developer, the Developer's agents, officers, or employees, including contractors and subcontractors hired in connection with the design construction and installation of the improvements.

Notwithstanding any of the above, the Developer will not be reimbursed by the City for any costs related to the Buena Vista Drive improvements unless the Developer pays prevailing wages for all work done in connection with the design, construction and installation of the improvements, as required by Section 5 of this Agreement and state law, and provides evidence, satisfactory to the City, of compliance with the Prevailing Wage Law.

6. Formula for Determining the Reimbursement Amount. It is the intent of the parties that the Developer will be reimbursed for the costs associated with design, construction and installation of the Buena Vista Drive improvements along the Cuesta College frontage from the north boundary of the Ayres property to Dallons Drive.
7. Submission of Documentation; City's Right to Audit. Upon the Developer's completion of the Buena Vista Drive improvements, the Developer shall submit documentation to the City evidencing the costs of designing, constructing and installing the improvements. Such documentation may include, but is not limited to, copies of Developer's construction contract(s), invoices, cancelled checks, complete lien releases with respect to the improvements and any other documentation reasonably requested by the City. The Developer agrees that the City shall have the right to audit, upon City's reasonable request, Developer's records of the costs associated with the improvements in order for the City to verify the Developer's costs.
8. Insurance. Prior to the commencement of the improvements, the Developer shall furnish, or cause to be furnished, to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the aggregate amount of one million dollars (\$1,000,000), naming the City as an additional insured.
9. Indemnification. The Developer shall indemnify, defend, and hold harmless the City, its agents, officers, and employees from and against any damages, claims, liability, losses, causes of action, suits, judgments, fines and expenses, arising out of or in any way connected to this Agreement, or the design, construction or installation of the Buena Vista Drive improvements provided herein, or resulting from any act or omission of the Developer arising out of this Agreement on or prior to the date that the improvements are

completed. Indemnification required by this Agreement shall include, but not be limited to, indemnification of the City if the Developer does not pay prevailing wages for all work done in connection with the design, construction and installation of the improvements, as required by Section 5 of this Agreement and state law. The provisions of this Section 10 shall remain in full force and effect for one year following completion of the improvements.

10. Assignment. The Developer shall not assign this Agreement without the City's express written consent.
11. Compliance with All Laws. The Developer agrees that it shall comply with all laws applicable to the work described in this Agreement.
12. Termination. This Agreement may be terminated by the mutual, written consent of both parties.
13. Amendment. This Agreement shall only be amended by the mutual agreement of both parties. Such amendment shall be in writing, signed by both parties.
14. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
15. Governing Law and Choice of Forum. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Luis Obispo.
16. Authority to Enter into Agreement. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the City and the Developer.
17. Notices. Any notice or other communications to be given to either party under this Agreement shall be in writing, shall be delivered to the addresses set forth below, and shall be effective, as follows:
  - (a) By personal delivery, effective upon receipt by the addressee;
  - (b) By facsimile, effective upon receipt by the addressee, so long as a copy is provided by certified U.S. mail, return receipt requested, postmarked the same day as the facsimile;
  - (c) By certified mail, return receipt requested, upon receipt of refusal.

CITY: City of Paso Robles  
Attn: City Engineer  
1000 Spring Street  
Paso Robles, CA 93446  
(tel.): (805) 237-3860  
(fax): (805) 237-3904

DEVELOPER: Ayres Paso Robles, LTD  
  
Paso Robles, CA 93446

18. Attorneys' Fees and Costs. If either party to this Agreement brings a suit or proceeding to enforce or require performance of the terms of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorneys' fees, including outside counsel.
19. Successors. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns and subcontractors of both parties.
20. Severability. In the event any term of this Agreement is held invalid by a court of competent jurisdiction, or subsequently enacted legislation, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
21. Captions. The captions of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.
22. Entire Agreement. This Agreement attached hereto and incorporated into this Agreement by reference, constitutes the entire agreement between the City and the Developer with respect to the subject matter hereof and supersedes all prior negotiations, oral and written.
23. Effective Date. The effective date of this Agreement shall be the date of execution by the City as shown below.



IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

**THE CITY:**

DATED: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
James L. App, City Manager

Attest:

By: \_\_\_\_\_  
Caryn Jackson, Deputy City Clerk

-AND-

**THE DEVELOPER:**

Doug Ayres

DATED: \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_  
Doug Ayres

[Signatures must be notarized]

ACKNOWLEDGMENT

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

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

personally appeared \_\_\_\_\_  
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)

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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. 14-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
AUTHORIZING REIMBURSEMENT FOR INSTALLATION OF CURB, GUTTER AND SIDEWALK  
IMPROVEMENTS AT CUESTA COLLEGE  
(AYRES PASO ROBLES, LTD.)

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WHEREAS, on July 17, 2012, the City Council approved PD 12-001, a resort hotel submitted by Doug Ayres on behalf of Ayres Paso Robles, LTD. located on Buena Vista Drive; and

WHEREAS, as a condition of approval of PD 12-001, Ayres will be constructing improvements to Buena Vista Drive in conjunction with his hotel development from Experimental Station Road to his north boundary, adjacent to Cuesta College property; and

WHEREAS, the transportation section of the Needs List in the AB 1600 impact fee program includes a project for construction of improvements along the Cuesta College property frontage of Buena Vista Drive; and

WHEREAS, the conditions of approval provide for reimbursement to Ayres Paso Robles, LTD, should Ayres extend Buena Vista Drive improvements across the frontage of the Cuesta College property; and

WHEREAS, transportation impact fees generated by the development of the Ayres hotel can be used to complete the improvements along the Cuesta College frontage to Dallons Drive.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. Based on the staff report prepared by the City Engineer, the City Council finds that Ayres Paso Robles LTD is eligible for reimbursement of the cost of installation of curb, gutter, sidewalk and paving along the frontage of Cuesta College property from Ayres north boundary to Dallons Drive. The reimbursement is estimated to be \$150,000.

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 city shall reimburse Ayres Paso Robles LTD. a maximum amount of \$150,000 for the installation of curb, gutter, sidewalk and paving on Buena Vista Drive along the frontage of Cuesta College property from Ayres north boundary to Dallons Drive.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 1<sup>st</sup> day of April, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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Duane Picanco, Mayor

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Caryn Jackson, Deputy City Clerk