

RESOLUTION NO. 11-107

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
AUTHORIZING REIMBURSEMENT FOR THE CONSTRUCTION OF A SEWER LINE
AND APPURTENANCES (416 SPRING STREET, PMD)

WHEREAS, on November 13, 2006, the City Engineer approved a plan for construction of the City sewer line in Pine Street from 8th Street to 4th Street; and

WHEREAS, in conjunction with redevelopment of his property, Pacific Management and Development (PMD), represented by Jim Saunders, has constructed a sewer line and appurtenances described in "Exhibit A – Properties Served by Sewer Line Improvements" in order to provide sewer service to his development; and

WHEREAS, Jim Saunders has requested reimbursement from the City since the sewer line and appurtenances constructed by PMD allows the abandonment of existing deteriorated sewer lines that served other properties in the area north of the PMD property. Therefore the sewer line and appurtenances qualify for reimbursement pursuant to Title 14, Section 14.08.070 M1b of the Municipal Code.

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 eligible amount of reimbursement to PMD is \$165,211 plus an additional \$39,518 when properties owned by the City benefit from said sewer.
2. That the real properties identified in "Exhibit B - Served Properties", will be served by the new sewer line and appurtenances.

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 PMD \$165,211 for the construction of a new sewer line and appurtenances in Pine Street from 8th Street to 6th Street and shall reimburse PMD an additional \$39,518 when properties owned by the City benefit from the Pine Street sewer line south of 6th Street; or prior to expiration of the Agreement in 2021, whichever occurs first.

SECTION 3. That the City Council hereby approves a one-time budget appropriation in the amount of \$165,200 from the City's Sewer Enterprise Fund to Budget Account No. 221-910-5452-786 to reimburse PMD for the installation of a new sewer line and appurtenances in Pine Street, from 8th Street to 6th Street, based upon documentation provided by PMD.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 16th day of August, 2011 by the following vote:

AYES: Strong, Hamon, Gilman, Steinbeck, Picanco

NOES:

ABSTAIN:

ABSENT:

Duane Picanco, Mayor

ATTEST:

Caryn Jackson, Deputy City Clerk

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Caryn Jackson, Deputy City Clerk


Duane Picanco, Mayor

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 _____ 2011, by and between the City of El Paso de Robles, a California municipal corporation (the "City") and Jim and Terry Saunders (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 410 Spring Street, Paso Robles (the "Saunders Property").

B. As a condition of approval of the development of the Saunders Property, the Developer is required to install a new sewer line (the "New Sewer Line"). The location of the New Sewer Line is shown on the map attached hereto as Exhibit A, incorporated herein by this reference. The New Sewer Line will serve the Saunders Property and will provide benefit to properties owned by the City.

C. The Developer will pay to design, construct and install the New Sewer Line. The City will reimburse the Developer for the costs associated with the New Sewer Line which exceed the costs attributable to the Developer's use of the New Sewer Line. The Developer will not be reimbursed for the costs of the New Sewer Line which are attributable to his use of the New Sewer Line. The exact amount the City will reimburse the Developer for costs associated with the New Sewer Line will be calculated in accordance with the provisions of this Agreement.

D. The Developer will dedicate the New Sewer Line to the City.

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; Dedication to City. As a condition of development, the Developer is required to install the New Sewer Line. The New Sewer Line shall be installed in accordance with the sanitary sewer design plans and specifications prepared by North Coast Engineering, Inc., submitted and approved by the City Engineer on November 13, 2006, or any revisions of these plans as approved by the City Engineer. Following completion of the New Sewer Line, to the satisfaction of the City, the Developer will dedicate the New Sewer Line to the City.
3. Nondiscrimination. The Developer, for itself and its successors and assigns, agrees that in the construction of the New Sewer Line, 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 New Sewer Line 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 New Sewer Line. It shall be the responsibility of the Developer to ensure that each contractor and subcontractor hired to perform work in connection with the New Sewer Line 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 New Sewer Line 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 New Sewer Line. The Developer shall, at its sole cost and expense, design, construct and install the New Sewer Line, 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 New Sewer Line:

5.1 All costs for design, construction, and installation of the New Sewer Line 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 New Sewer Line shall be completely installed, shall have received all necessary approvals, and shall be dedicated to 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 New Sewer Line. 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 New Sewer Line.

Not notwithstanding any of the above, the Developer will not be reimbursed by the City for any costs related to the New Sewer Line unless the Developer pays prevailing wages for all work done in connection with the design, construction and installation of the New Sewer Line, 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 New Sewer Line which are attributable to use of the New Sewer Line by properties other than the Saunders Property. The Developer will be reimbursed a portion of his costs for design, construction and installation of the New Sewer Line, as set forth in Exhibit A.
7. Submission of Documentation; City's Right to Audit. Upon the Developer's completion of the New Sewer Line, the Developer shall submit documentation to the City evidencing the costs of designing, constructing and installing the New Sewer Line. 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 New Sewer Line 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 New Sewer Line in order for the City to verify the Developer's costs.
8. Insurance. Prior to the commencement of the New Sewer Line, 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 New Sewer Line 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 New Sewage Line is transferred from the Developer to the City. 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 New Sewer Line, 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 transfer of the New Sewage Line from the Developer to the City.

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: Jim and Terry Saunders
Pacific Management & Development, Inc.
416 Spring Street, Suite 301
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, including Exhibits A and B, 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:

Jim and Terry Saunders

DATED: _____, 20____

By: _____
Jim Saunders

By: _____
Terry Saunders

[Signatures must be notarized]

Exhibit A

PROPERTIES SERVED BY SANITARY SEWER LINE IMPROVEMENTS

Assessor Parcel Numbers	Property Identification
APN 009-261-019, 020, 021, (PMD)	416 Spring Street
APN 009-261-004 (City)	Former City Hall Site

Total Cost of Sewer \$275,654

Sewer provided for City maintenance benefit (6th to 8th Streets) = \$165,211

Shared sewer line 6th Street to 4th Street = \$ 79,035

Saunders sewer line located on private properties = \$ 31,408

City will reimburse \$165,211 per this agreement. Upon sale or development of the City's 4th and Pine property (APN 009-261-004) by owner other than Saunders or prior to expiration of the agreement in 2021; City will reimburse Saunders and additional \$79,035 / 2 = \$ 39,518.

MAP SHOWING NEW SEWER LINE

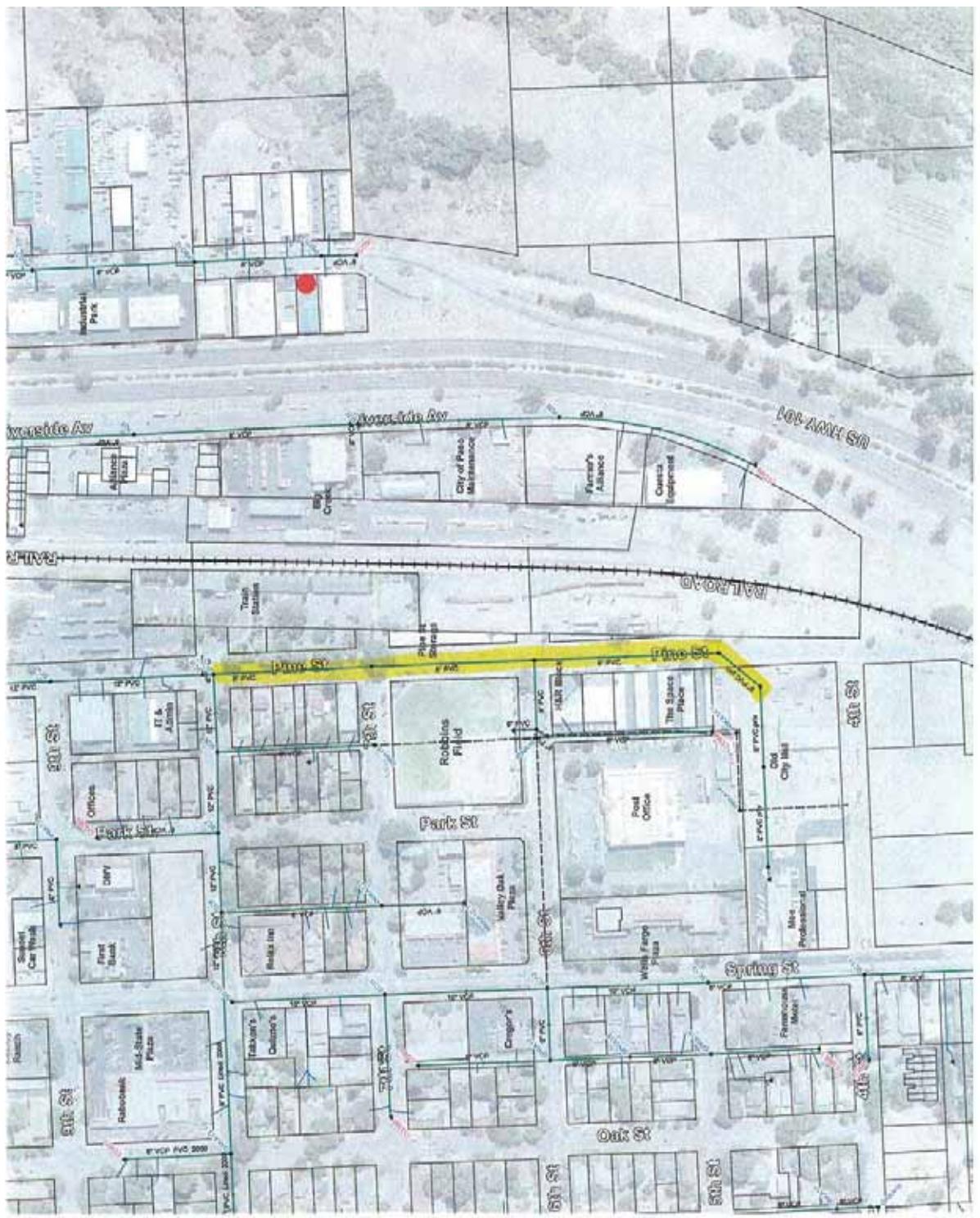


Exhibit B
MAP OF PROPERTIES SERVED BY

SANITARY SEWER LINE IMPROVEMENTS



ACKNOWLEDGMENT

State of _____ } ss.
County of _____ }

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 _____ } ss.
County of _____ }

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(here insert name and title of the officer)

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Signature _____

(Seal)