

RESOLUTION NO. 15-076

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES APPROVING AND AUTHORIZING THE EXECUTION OF A REIMBURSEMENT AGREEMENT FOR CONSTRUCTION OF UPTOWN SPECIFIC PLAN IMPROVEMENTS TO SPRING STREET (PASO ROBLES SPRING STREET, LLC)

WHEREAS, on July 9, 2013, the Planning Commission adopted Resolution No. 13-011 approving Tentative Tract 3047 and PD 13-001, comprising 23,500 square feet of commercial space and 42 residential units located at 3328 Spring Street; and

WHEREAS, in accordance with conditions of approval of Tentative Tract 3047 and PD 13-001, Paso Robles Spring Street, LLC is required to construct improvements to Spring Street in accordance with the design standards of the Uptown Specific Plan; and

WHEREAS, improvements to Spring Street in accordance with Uptown – Town Centre Specific Plan design standards appear on the AB 1600 Needs List included in Resolution No. 14-035 adopted by the City Council on April 1, 2014; and

WHEREAS, in accordance with Council Resolution 14-035, a developer that has been required to construct any facility on the AB 1600 Needs List may request reimbursement of its costs; and

WHEREAS, the City Attorney has prepared a Reimbursement Agreement allowing for the reimbursement to Paso Robles Spring Street, LLC, of construction costs associated with improvements to Spring Street in conformance to the design standards of the Uptown Specific Plan.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. Based on the staff report prepared by the City Engineer, the City Council finds that Paso Robles Spring Street, LLC is eligible for reimbursement of the cost of Spring Street improvements in accordance with the design standards of the Uptown Specific Plan. The reimbursement is estimated to be no more than \$ 400,000.

SECTION 2. That the City Council hereby approves and authorizes the City Manager to execute a Reimbursement Agreement in substantially the form attached hereto as Exhibit A and incorporated herein by reference, subject to any minor technical and clarifying changes approved by the City Manager and City Attorney.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 16th day of June, 2015 by the following vote:

AYES: Strong, Gregory, Hamon, Reed, Martin

NOES:

ABSTAIN:

ABSENT:



Steven W. Martin, Mayor

ATTEST:



Caryn Jackson, Deputy City Clerk

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (the "**Agreement**") is entered into this _____ day of _____, 2015 ("Effective Date"), by and between the City of El Paso de Robles, a California municipal corporation (the "**City**") and PASO ROBLES SPRING STREET, LLC, (the "**Developer**") individually referred to herein as a "party" and collectively referred to as the "**parties**", with reference to the following facts:

RECITALS

A. The Developer owns certain real property in the City, located at 3328 Spring Street, Paso Robles consisting of 0.52 acres ("**Real Property**") and more particularly described on Exhibit "A." The Real Property is permitted for the development of a mixed-use retail and residential complex ("**Project**") containing 23,550 square feet of building pursuant to Planning Commission Resolution No. 13-011 adopted on July 9, 2013, which approved PD 13-001, together with the Tentative Tract Map 3047 (collectively the "**Entitlements**");

B. The Real Property is located within an area for which a specific plan has been adopted by the City Council called the Uptown Area Specific Plan (the "**Specific Plan**"). Pursuant to the Specific Plan, development of property within the Specific Plan area is subject to certain development goals (the "**Uptown-Town Centre Plan Street Design Standards**");

C. In addition, pursuant to Government Code section 66000 *et seq.*, the City has adopted a schedule of impact fees for development within the City ("**City Fees**") to help defray the cost of certain public facilities and improvements, which City Fees may be amended from time to time, in accordance with law;

D. The parties wish to document, among other things, (i) certain matters related to the Uptown-Town Centre Design Standards; and (ii) certain credits and reimbursements available to Developer by the City in accordance with Section 10 of City Council Resolution No. 14-035;

E. As a condition of City's approval of the Entitlements, specifically including PD 13-011, the Developer is required to install certain transportation improvements along Spring Street in accordance with the Uptown-Town Centre Street Design Standards (collectively the "**Improvements**"), which are listed on Exhibit "B," attached hereto. The Improvements will accommodate the development of the Project as well as other future third party developments and benefit the public, the City and surrounding public improvements, roads and intersections;

F. The Developer has paid or is paying for the construction and/or installation of the Improvements, with the development of the first phase of the Project. The Developer is entitled to be reimbursed for the costs of the Improvements, to the extent and on the terms and conditions set forth in this Agreement; and

G. The City has found that the execution and fulfillment of this Agreement is vital and in the best interests of the City and in the health, safety and welfare of the City's residents, and is 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. Fees. Subject to the application of the reimbursement or credit to be applied, as set forth in Section 7, below, all development of the Project shall be required to pay all applicable City fees, including, but not limited to, the development impact fees for transportation facilities (“**Transportation Fees**”) adopted by City Council Resolution No. 14-035.
3. Improvements. As a condition of development of the Project, the Developer is required to install and/or construct the Improvements listed in Exhibit B. As applicable, the Improvements shall be installed in accordance with the plans and specifications prepared by licensed engineers and consultants, pursuant to permits issued by the City, and in accordance with this Agreement.
4. Nondiscrimination. The Developer, for itself and its successors and assigns, agrees that in the construction and installation of the Spring Street Improvements, the Developer shall not discriminate against or segregation of any person, or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.
5. Prevailing Wages. The Improvements to Spring Street are public works 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 Spring Street Improvements. It shall be the responsibility of the Developer to ensure that each contractor and subcontractor hired to perform work in connection with such Spring Street Improvements comply with the requirements of this Section 7, 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 City's general prevailing rate of wages and employer payments for health and welfare, vacation, pension

and similar purposes, a copy of which is on file in the office of the Director of Public Works, and which shall be made available for viewing to any interested person upon request.

The Developer shall indemnify, hold harmless, and defend the City (with counsel reasonably acceptable to the City), against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure of the Developer or its contractors to pay prevailing wages, if and to the extent required by law, or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of the Spring Street Improvements identified in this Agreement.

6. Conditions of Reimbursement. Prior to the commencement of construction of the Improvements, Developer hereby warrants that it has secured, or will secure, any and all permits required by the City. The Developer shall, at its sole cost and expense, construct and install the Improvements. All of the following conditions must be satisfied before the Developer is entitled to be reimbursed or receive a credit for any portion of the costs of the Improvements as herein provided:

6.1 The plans for the Improvements must be approved in advance by the City. All costs for the construction and installation of the Improvements shall be fully paid by the Developer, and the Developer shall have obtained lien releases or waivers satisfactory to the City before the Developer shall be entitled to any reimbursement or credit. The Developer shall take any and all actions necessary to convey and vest full, complete, and clear title to those Improvements on City property.

6.2 The Improvements shall be completely installed and approved by City staff, as applicable, before the Developer shall be entitled to any reimbursement or credit.

6.3 The amount of reimbursement or credit for the Spring Street Improvements shall be the documented actual cost of construction of the Improvements. Developer shall provide evidence reasonably satisfactory to the City of all costs for which reimbursement and credit is sought. To be eligible for reimbursement or credit, any such costs resulting from changes to the Improvements constructed pursuant to this Agreement must be approved in writing by the City prior to construction unless resulting from field-ordered changes initiated by City inspectors. At the completion of the construction of the Improvements, Developer shall provide City a written final accounting of all actual costs and expenses, inclusive of change orders (the “**Final Accounting**”). Within thirty (30) days of receipt of the Final Accounting, City shall provide to Developer either written confirmation of the Final Accounting, written requests for clarification or documentation supporting the claimed costs.

Notwithstanding any of the above, the City shall not be required to reimburse the Developer for any costs related to the Spring Street Improvements unless the Developer pays prevailing wages for all work done in connection with the construction and installation of the Improvements, as required by Section 5 of this Agreement and by state

law, and provides evidence satisfactory to the City of Developer's compliance with the Prevailing Wage Law.

7. Reimbursement/Credit Limit. Subject to documentation satisfactory to City of the costs of the Improvements, the parties agree that the maximum aggregate amount of reimbursement and credit to which Developer is entitled for the Project shall be the lesser of (i) the actual documented costs of the Improvements as approved by City, or (ii) Four Hundred Thousand Dollars (\$400,000) (the "**Approved Reimbursement**") Developer shall receive a credit against the amount of Transportation Fees that would otherwise be paid with the development of each phase of the Project until the full amount of the Approved Reimbursement has been applied against the Project. Thereafter, Developer shall pay the full amount of Transportation Fees then owed on the remainder of the Project. In the event that Developer conveys its interest in the Project to a third party, and the Approved Reimbursement has not been fully credited against the Transportation Fees due from the Project, City shall reimburse Developer for the remainder of the Approved Reimbursement when and as the third party pays the Transportation Fees in connection with the development of the remaining portion of the Project. In no event shall the City be required to reimburse or credit Developer for any portion of the Approved Reimbursement from any monies other than the Transportation Fees attributable to the development of the Project on Tract 3047.

8. Source of Funds. Reimbursement for the Improvements identified in this Agreement shall be made exclusively from the "**Transportation Funds**" collected from the development of Tract 3047. The City's obligation to the Developer is expressly conditioned and contingent upon the availability of monies within said Transportation Funds, as determined by the City Council in its sole and absolute discretion, subject to the right of audit by Developer. The Developer shall have no claim against any other source of City revenue, including but not limited to, general fund monies.

9. Conveyance of Documents. Upon City's acceptance of the Improvements identified in this Agreement, the Developer shall convey and deliver to the City copies of all plans, specifications, shop drawings, as-built plans, operating manuals, service manuals, construction contracts, warranties, and any other documents relating to the design, construction and operation of the Improvements, which are in the Developer's custody or control, or in the custody or control of any of the Developer's contractors, subcontractors or agents.

9.1 The City does not assume any liability, duty or obligation with respect to the Developer's contractors, subcontractors or agents by execution or performance of this Agreement, and no contractors, subcontractors or agents or any other individuals or entities are third party beneficiaries of this Agreement.

9.2 Upon the Developer's completion of the Improvements, the Developer agrees to assign to the City the warranties provided by its contractors for the Improvements identified in this Agreement as to materials and workmanship and should any failure of the Improvements or any parts thereof occur within a period of one (1) year

after substantial completion of the Improvements, the City shall have the right to seek correction or cure of the defective situation from the contractor installing the same.

10. Submission of Documentation; City's Right to Audit. Upon the Developer's completion of the Spring Street Improvements, the street improvements shall be deemed transferred to the City and the Developer shall submit documentation to the City reasonably evidencing the costs of constructing and installing the Improvements. Such documentation may include, but is not limited to, copies of the Developer's construction contract(s), invoices, canceled checks, complete lien releases, and any other documentation reasonably requested by the City. The Developer agrees that the City shall have the right to audit, upon the City's reasonable request, the Developer's records of the costs associated with the construction and installation of the improvements in order for the City to verify the Developer's costs.

11. Insurance. Prior to the commencement of construction of the Improvements, the Developer shall furnish, or cause to be furnished, certificates of bodily injury and property damage insurance policies in the amounts and form required by the City. Developer shall maintain all such insurance in full force and effect during the entire time of construction of the Improvements until the City has formally accepted the Improvements.

12. 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 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 transferred from the Developer to the City; provided that in such event, Developer shall retain the benefit of all third party warranties. Indemnification required by this Agreement shall include, but need 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 by state law. The provisions of this Section 12 shall remain in full force and effect for one (1) year following the completion of the Spring Street Improvements.

13. Public Safety Protections. The Developer shall assure that all necessary steps are taken (including the erection of fences, barricades and warning devices) to protect private contractors and their employees and the public from the risk of injury arising out of the condition of the property or the Developer's activities in connection with the construction of the Improvements, including without limitation, fire, or the failure, collapse or deterioration of any improvements or structures.

14. No Joint Venture. Neither this Agreement, nor any obligation under this Agreement shall constitute a joint venture between the City and the Developer. In performing its obligations under this Agreement, the Developer shall be deemed an independent contractor and not an agent or employee of the City.

15. Assignment. The Developer shall not assign this Agreement or delegate the performance of all or any of the obligations under it without the prior express written consent of the City which shall not be unreasonably withheld, conditioned or delayed. In no event shall any assignment by the Developer release the Developer from its obligations under this Agreement unless such assignment has been approved in writing by the City. This Section 15 shall in no way prevent or limit the Developer from entering into any contracts with its contractor, subcontractors or materialmen that may be necessary or desirable in the performance of the Developer's responsibilities under this Agreement.

16. Non Liability of City Officials and Employees. No official or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default by the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

17. Compliance with All Laws. The Developer agrees that it shall comply with all laws applicable to the work described in this Agreement.

18. Termination. This Agreement may be terminated by the mutual, written consent of both parties.

19. Amendment. This Agreement shall only be amended by the mutual agreement of both parties. Such amendment shall be in writing and signed by both parties.

20. 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.

21. 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.

22. 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.

23. 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 or 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: Paso Robles Spring Street, LLC

Santa Barbara, CA 9
Attention: Rick Jeffrey

24. 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 fees for outside counsel.

25. 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.

26. Severability. In the event any term of this Agreement is held invalid by a court of competent jurisdiction, or subsequently enacted legislation, this Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

27. 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.

28. Entire Agreement. This Agreement, including the Exhibits attached hereto (all of which are deemed 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.

29. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

30. Effective Date. The effective date of this Agreement shall be the date of first above written.

{Signatures on following page}

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

"CITY"

CITY OF EL PASO DE ROBLES

DATED: _____, 2015

By: _____
James L. App,
City Manager

Attest:

By: _____

Deputy City Clerk

"DEVELOPER"

DATED: _____, 2015

PASO ROBLES SPRING STREET, LLC,

By: _____
Name:

ACKNOWLEDGMENT

State of California)
) ss
County of _____)

On _____ , 2015 before me, _____,
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 is true and correct.

WITNESS my hand and official seal.

_____ [Seal]
(Signature of Notary Public)

ACKNOWLEDGMENT

State of California)
) ss
County of _____)

On _____ , 2015 before me, _____,
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 is true and correct.

WITNESS my hand and official seal.

_____ [Seal]
(Signature of Notary Public)

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY

That certain real property located in the County of San Luis Obispo, California:

APN 008-042-011

EXHIBIT “B”

LIST OF IMPROVEMENTS AND ESTIMATED COSTS¹

1.	Spring Street Improvements:	
a.	34 th Street Lighted Crosswalk	\$165,000
b.	Spring Street Improvements based on: Approved City off-site improvement plans for The Village: Spring Street from 32 nd Street to 34 th Street	
		\$ 235,000
	Total	\$ 400,000

¹ All costs are estimated and subject to verification in accordance with the terms of the Agreement.