

SOUTH PLACER MUNICIPAL UTILITY DISTRICT

ORDINANCE 15-01

AN ORDINANCE ESTABLISHING REQUIREMENTS FOR CREDIT AND REIMBURSEMENT AGREEMENTS

BE IT ENACTED BY THE BOARD OF DIRECTORS OF SOUTH PLACER MUNICIPAL UTILITY DISTRICT AS FOLLOWS:

SECTION 1: GENERAL PROVISIONS

Section 1.01: Purpose.

The purpose of this Ordinance shall be to establish the framework whereby a property owner or developer may obtain credits in lieu of payment of sewer Participation Charges for the construction of Major Facilities (as defined herein) and/or seek reimbursement for the costs of construction of Major Facilities under the eligibility criteria set forth herein. This Ordinance shall further the policy of the Board of Directors of the District to provide alternative mechanisms to facilitate the construction and financing of District infrastructure.

Section 1.02: Definitions

- A. "District" means the South Placer Municipal Utility District.
- B. "Board" means the Board of Directors of the South Placer Municipal Utility District.
- C. "Applicant" means the owner or authorized agent of the owner, or subdivider of real property who applies for credits against Participation Charges or a reimbursement agreement pursuant to the provisions of this Ordinance with respect to the acquisition or construction of Major Facilities, a portion of which benefits the applicant's property.
- D. "Benefit Area" means the area comprising all lands benefited by the improvements, or any portion thereof, acquired or constructed pursuant to this Ordinance with respect to which a reimbursement agreement has been entered into.
- E. "Benefitted Property" means any parcel or parcels of improved or unimproved real property benefited by any improvement, or any portion thereof, acquired or constructed pursuant to this Ordinance with respect to which a reimbursement agreement has been entered into.
- F. "District Specifications" shall mean the *Standard Specifications and Improvement Standards for Sanitary Sewers* prepared and ordered effective by the General Manager pursuant to the provisions of Section 11937(e) of the Municipal Utility District Act, Division 6, of the Public Utilities Code, State of California, as such may be amended from time to time.

- G. "General Manager" means the General Manager of the District appointed pursuant to the provisions of Section 11926 of the Public Utilities Code.
- H. "Major Facilities" means trunk sewer upgrades and expansion facilities that have been identified by the District's System Evaluation and Capacity Assurance Plan (SECAP) as necessary to serve new development within the District's service area boundaries and which in the General Manager's determination are suitable both in terms of size, scope, expense and general benefit to the District so as to be eligible for credits and/or reimbursements under the provisions of this Ordinance.
- I. "Person" means any individual, partnership, co-partnership, firm, company, association, society, corporation, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine and the singular shall include the plural where indicated by context.
- J. "Participation Charge", means the Sewer Participation Charge as contained in Section 3 of SPMUD Sewer Use Ordinance No. 09-02, also known as a fee, connection fee, participation fee or developer impact fee, shall mean the sum paid to the District in lawful money of the United States by any person, for the privilege of connecting to the District's facilities, whether such connection is voluntary or mandatory, to be used to fund the fair share portion of the cost of construction of the trunk sewer upgrades and expansion facilities that have been identified by the District's System Evaluation and Capacity Assurance Plan (SECAP) as necessary to serve new development within the District's service area boundaries.. The District's facilities shall include local collection systems, trunk lines, and capacity.
- K. "Property Owner" means the record owner of the real property upon which is being served or to be served by the District's Wastewater system.
- L. "Wastewater Collection System" shall mean the pipe system and appurtenances for collecting and carrying water and water-carried wastes from domestic, nonresidential and industrial sources to a wastewater treatment plant.
- M. "Wastewater System" shall mean all facilities for collecting, pumping, treating and disposing of wastewater.

SECTION 2: APPLICATION

Any owner or subdivider of real property who or which is required by the District to bear the costs of constructing and installing improvements which are dedicated to, or acquired for, public use and which contain supplemental size, capacity, numbers or length which benefit or benefits property not owned by said owner or not within said subdivider's subdivision, may apply for credits and/or a reimbursement agreement pursuant to which such improvements shall be acquired or constructed and providing for reimbursement of the excess costs thereof from Benefitted Properties and/or the Benefit Area, as such may be determined by the District. Applications shall be made in the form and manner prescribed by the General Manager.

SECTION 3: CREDITS

Upon application by the property owner or the property owner's authorized representative, the District may authorize credit for the construction of any Major Facilities in lieu of payment of all, or a portion of, the sewer Participation Charge required. If authorized, such credit shall be recognized only by prior written agreement between the parties, based upon the provisions hereinafter stated.

Section 3.01: Major Facilities.

The amount of credit for construction of Major Facilities shall equal the actual cost of construction as determined under a construction contract awarded by the competitive bid process in accordance with California state law and District policy, plus eight (8) percent of the actual cost of construction as an offset for engineering costs. This credit shall be allowed only if the actual cost of construction is the result of a competitive bidding process that is consistent with competitive bidding and prevailing wage requirements of the Public Contracts Code and Labor Code that would be imposed on the District as if it was contracting directly for the construction.

Notwithstanding any provision herein to the contrary, credits shall not be allowed for costs incurred for the purpose of accelerating a development schedule, unless required by the District, and then only if the amount of such credit is approved in writing by the District Engineer prior to commencement of the work.

Credits shall not be allowed for additional costs incurred when the proximate cause is an action or inaction of the owner, developer, or Applicant, including but not limited to delays, lost productivity, change orders and claims.

Section 3.02: Competitive Bid Process.

Credit for actual cost when authorized herein shall only be allowed if:

- A. A project for the construction of an eligible Major Facility is advertised and awarded in the same manner and subject to the same laws and regulations as if the District was advertising and awarding the project, including but not limited to compliance with the California Labor and Public Contracts Codes, and incorporation into the construction contract documents the District Specifications then in effect. Projects shall be advertised for a minimum of thirty (30) days and shall not be advertised for bidding prior to approval of the improvements plans by the District and any other jurisdiction for which approval is required. Project bids shall not include schedule acceleration or acceleration alternatives; and
- B. All real property interests necessary to complete delivery of the Major Facilities to the District have been transferred to District or other jurisdiction as appropriate.

Section 3.03: Apportionment of Credit.

Credit for Major Facilities shall be uniformly apportioned among the parcels for which the Major Facilities were approved at the time of installation.

Section 3.04: Participation Charge Credit.

Credits allowed pursuant to this Ordinance shall be applied toward a maximum of 50% of the amount of the Participation Charges due for the real property to which the credit is apportioned. Allowable costs of construction of Major Facilities which exceed the amount of Participation Charge credits allowed in this section shall be reimbursed in accordance with Section 4, below.

Section 3.05: Divided Parcel Credit.

Where credit is allowed pursuant to this Ordinance and apportioned to a particular parcel that is to be divided, the credit shall be apportioned uniformly among the divided parcels.

Section 3.06: Designated Construction.

Unless otherwise determined by the Board, an owner of real property shall construct any Major Facility shown by the District to be designated for construction on that real property.

Section 3.07: Public Financing District Credits.

Credits for Major Facilities financed by an assessment district, community facilities (Mello Roos) district, special tax district, or similar public infrastructure financing may be allowed by the District. The Applicant shall immediately notify District of any proposal to provide funding for construction of Major Facilities by a public infrastructure financing entity. The District may, at its sole discretion, redetermine and reassign credits for sewer Participation Charges based on the amount of public funding thereby provided.

Any credit allowed shall be for a pro rata portion of those incidental expenses of the public infrastructure financing entity which are considered by the Board to be the ordinary expenses for construction of Major Facilities, and which are not incidental to and peculiar to the public infrastructure financing entity. Such incidental expenses for which credit shall not be allowed include, but are not limited to, attorneys' fees, preparation of legal descriptions, preparation of documents, all expenses related to the sale of bonds, and other expenses required by the Placer County Treasurer or appropriate administrative authority.

SECTION 4: REIMBURSEMENT AGREEMENTS

Section 4.01: Reimbursement Agreement Terms.

Where allowable costs of construction of Major Facilities exceed the amount of any Participation Charge credits, then in that event the amount of such exceedance shall be reimbursed by the District to the entity which constructed the Major Facilities, provided:

- A. The Major Facilities were constructed pursuant to plans approved by the District Engineer prior to commencement of any construction.
- B. The construction was not financed by a public infrastructure financing entity.
- C. Fee requirements, allowable credits and reimbursable amounts all have been determined consistent with this Ordinance.
- D. The Applicant has paid all fees required by the ordinance.
- E. The reimbursement request was submitted in writing to the District prior to the final approval of an improvement plan, or where no improvement plan is filed, prior to commencement of any construction.
- F. A written reimbursement agreement has been executed by the party who executed the subdivision agreement with the County of Placer, City of Rocklin, or Town of Loomis. Where no subdivision map is to be filed and before the time the improvement plans for the real property are approved by the County of Placer, City of Rocklin, or Town of Loomis, the written reimbursement agreement shall be executed by the owner of the real property where the construction of the Major Facilities will occur.
- G. The written reimbursement agreement shall set forth the terms, conditions, amount of reimbursement and time frame for reimbursement, including no prepayment penalties and interest per annum at the net County of Placer treasury pool rate for the prior fiscal year on the unpaid balance, with interest not beginning to accrue until sixty (60) days have passed from the date construction is accepted by the District and from the date of receipt by the District of releases of liens, claims, and encumbrances on the Major Facilities, a reimbursement invoice for an amount consistent with the terms of the reimbursement agreement, and all documents necessary to substantiate the actual costs.
- H. Notwithstanding any other provisions contained herein, reimbursements will be made under the following terms:
 - a. Reimbursements less than \$100,000 shall be made within the year of execution of the reimbursement agreement.
 - b. Reimbursements greater than \$100,000, but less than \$1,000,000, shall be made over 5 years, commencing at the date of the execution of the reimbursement agreement.
 - c. Reimbursements greater than \$1,000,000, shall be made over 10 years, commencing at the date of the execution of the reimbursement agreement.
- I. The Board has approved the written reimbursement agreement.

- J. The General Manager shall provide for the accounting of the collection and payment of reimbursements applicable to the Benefit Area or Benefitted Property. Nothing herein contained shall require the District to segregate reimbursements from general funds of the District, to maintain special funds or accounts for such charges or to make any reimbursement payments if no funds are available.
- K. The maximum term of any reimbursement agreement authorized by this Ordinance shall be ten (10) years. Upon expiration of the term, all obligations of the District thereunder to reimburse the applicant shall cease.

Section 4.02: Public Financing District Reimbursements.

If reimbursement is sought from the District for the construction of Major Facilities financed by an assessment district, community facilities (Mello Roos) district, special tax district, or any similar public infrastructure financing entity, then any reimbursement from the District due therefrom shall be paid solely to the assessment district, community facilities (Mello Roos) district, special tax district, or any similar public infrastructure financing entity, or its successor, and not to the person constructing or causing the construction of the project. At no cost to the District, the person claiming entitlement to reimbursement shall have the entire burden of establishing to the District's complete satisfaction that the project is not constructed as a project of an assessment district, community facilities (Mello Roos) district, special tax district, or any similar public infrastructure financing entity. At no cost to the District, such District satisfaction may include, by way of illustration and not limitation, reimbursement conditioned upon indemnification, bond, mediation, judicial interpleader, and payment of District's actual attorney's fees. Notwithstanding the foregoing, the District Engineer may determine, in his or her sole discretion that reimbursement may be made to the property owner who constructed the Major Facilities.

If the construction of Major Facilities is financed by a public infrastructure financing entity and where the person, firm or corporation seeking reimbursement has deposited cash into the incidental expense special deposit trust fund established for the financing of the assessment district, reimbursement may be allowed provided all provisions of this Ordinance are met. The reimbursable amount shall be the lesser of the amount of the cash deposit or the amount by which the allowable costs for construction exceed the amount of any water development fee.

By entering into a reimbursement agreement, the District shall not be deemed an insurer of payment to the applicant of any reimbursement charge or charges or otherwise guarantee the collection and payment over to the applicant of any reimbursement charge.

SECTION 5: MISCELLANEOUS PROVISIONS

Section 5.01 Conflicts:

In the event of a conflict between any provision of this Ordinance and the provisions of any other ordinance, rule or regulation promulgated by any California city or county or by any federal or state agency, the provisions of this Ordinance shall prevail except in cases where Federal or California law provide otherwise.

Section 5.02 Severability:

It is hereby declared that in the event any provision or section of this Ordinance is declared void or invalid by any Court of competent jurisdiction, that the remaining sections of the Ordinance shall not be affected thereby, and it is the intent of said Board of Directors to enact each and every, all and singular, of the provisions of this Ordinance irrespective of any provision which may be declared null and void.

Section 5.03 Vested Contractual Rights Not Affected:

No provision of this Ordinance shall be construed as altering or affecting any vested contractual rights between the District and any person, firm, or corporation with whom a valid contract exists as of the effective date of this Ordinance.

Section 5.04 Introduction/Publication/Effect:

- A. This Ordinance was introduced at a regular meeting of the Board of Directors on the 2nd day of **July, 2015**.
- B. Upon final passage, this Ordinance or a summary of this Ordinance shall be published once a week for two successive weeks in a newspaper of general circulation within the District, pursuant to the provisions of Sections 11534 and 11910 of the Public Utilities Code.
- C. Ordinance to take effect upon final passage.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the South Placer Municipal Utility District on this 6th day of **August, 2015** by the following vote:

AYES: W. Dickinson, V. Markey, G. Mitchell, J. Murdock, J. Williams

NOES:

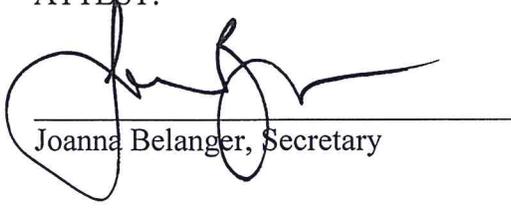
ABSTAIN:

ABSENT:

SOUTH PLACER MUNICIPAL UTILITY DISTRICT

By 
John Murdock, President

ATTEST:


Joanna Belanger, Secretary