

REPORT TO CITY COUNCIL

DATE: MARCH 11, 2009

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: RAMIRO ADEVA, CITY ENGINEER

SUBJECT: APPROVAL OF SEWER EXTENSION REIMBURSEMENT AGREEMENT 09-01 LOCATED ON FOOTHILL DRIVE

In July 2008, property owners Rafi Sharon of 28220 Foothill Drive, and Joel Rizer of 5709 Fairview Place, completed a public sewer extension of approximately 565-feet along Foothill Drive to their properties. Mr. Sharon initiated this project in order to sewer a single family residence he is currently constructing. Mr. Rizer partnered with Mr. Sharon after discovering a problematic septic system during construction of an addition to his residence. The costs associated with this project included design, plan check review, permits, construction, and inspection of the extended sewer line. Their invitations to neighbors for up-front participation and cost sharing were unsuccessful, and now they are requesting a reimbursement agreement be established for expenses incurred in the sewer line extension. It should be noted that six property owners participated after construction began and secured private agreements with Mr. Sharon and Mr. Rizer. The total cost of this project which is subject to this agreement is \$128,223.66, which excludes work performed on the Sharon and Rizer properties.

The attached Sewer Extension Reimbursement Agreement will provide a method for which they will be reimbursed by any property owner that connects to the extended line. The agreement will terminate after 15 years and provides for an annual 5% increase to the reimbursable construction costs.

RECOMMENDATION

Staff respectfully recommends the City Council:

1. Approve Sewer Reimbursement Agreement 09-01;
2. Authorize the Mayor to sign the Agreement and authorize the City Clerk to forward the executed agreement to the County Recorder for recordation.

Attachment: Agreement

RECORDING REQUESTED BY:
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301

WHEN RECORDED MAIL TO:
City Clerk
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301

(Space Above this Line for Recorder's Use Only)

CITY OF AGOURA HILLS
SEWER EXTENSION REIMBURSEMENT
AGREEMENT NO. 09-01

THIS AGREEMENT is made and entered into by and between the CITY OF AGOURA HILLS, a municipal corporation ("CITY") and Rafi Sharon and Joel Rizor ("DEVELOPER").

RECITALS

A. DEVELOPER owns that certain real PROPERTY commonly known as 28220 Foothill Drive & 5709 Fairview Place and more particularly described in Exhibit "A" and "A-1" attached and incorporated by this reference ("PROPERTY").

B. In the interest of public health and safety, DEVELOPER desired to provide sanitary sewer service to the PROPERTY by constructing certain sewer improvements ("FACILITIES") as generally described in Exhibit "B" attached and incorporated by this reference, and as more particularly identified in Improvement Plans for PC 07-02 / C02-542-01 on file with CITY.

C. DEVELOPER has constructed said FACILITIES at DEVELOPER'S sole cost and expense, which provide sanitary sewer service for DEVELOPER'S PROPERTY and thirteen other properties tributary to the proposed FACILITIES. The benefitted area is delineated on the map attached hereto as Exhibit "B-1".

D. DEVELOPER desires to be reimbursed for the additional cost of FACILITIES necessary to be constructed to serve properties other than DEVELOPER'S PROPERTY.

E. It is in the public interest and convenience that the CITY obtain sanitary sewer service for said other properties which are within the area tributary to said FACILITIES.

NOW THEREFORE, CITY and DEVELOPER agree as follows:

1. CONSTRUCTION OF FACILITIES

DEVELOPER HAS CONSTRUCTED, AT DEVELOPER'S sole expense, the FACILITIES referenced above in paragraph B of the Recitals, in compliance with all applicable codes, ordinances, plans, specifications, and agreements relating to such FACILITIES.

2. ACCEPTANCE AND OWNERSHIP OF THE FACILITIES

The work involving the FACILITIES was constructed under the supervision of and to the satisfaction of the CITY, and is hereby deemed approved and accepted as complete by the City Council. Said FACILITIES are hereby dedicated to CITY by the DEVELOPER and the CITY herein accepts said dedication.

3. REIMBURSABLE CONSTRUCTION COSTS

a. DEVELOPER has submitted to the City Engineer copies of invoices, payment vouchers and other documentation, as reasonably requested, in order to verify the actual total cost of construction, including related engineering and carrying costs.

b. The total cost necessarily incurred by the DEVELOPER in the construction of the FACILITIES has been verified by the City Engineer based upon the documentation submitted pursuant to subsection "3. a." above. The City Engineer has submitted such costs in Exhibit "B", attached hereto and likewise inserted in the per-connection cost of the FACILITIES, subject to reimbursement. A copy of Exhibit "B", as so completed, shall be transmitted to the DEVELOPER by the City Engineer.

c. For the purposes of this Agreement, the term "Reimbursable Construction Cost" shall mean the total cost amount listed in Exhibit "B", less DEVELOPER'S share of the total construction cost.

4. COLLECTION AND PAYMENT OF REIMBURSABLE CONSTRUCTION COSTS

a. CITY shall use all reasonable efforts to collect the applicable per-connection pro-rata share of the reimbursable construction costs of the subject FACILITIES prior to any subdivision of the properties or parcels identified in Exhibit "B", the issuance of a building permit, or connection to the FACILITIES, whichever may first occur; provided, however, that neither the CITY, its general funds, nor its officers, agents or employees shall be in any manner responsible for, or obligated to, pay any monies promised to be paid under this Agreement.

b. The per-connection cost of the FACILITIES, as determined by the City Engineer, and as set forth in Exhibit "B" attached hereto, shall be adjusted by the City Engineer at the time reimbursable construction costs are collected pursuant to subsection "4 .a." above. Such adjustment shall be computed as a five percent (5%) annual increase over the construction cost. The adjusted per-connection cost of the FACILITIES shall constitute the amount subject to collection and reimbursement by the CITY to the DEVELOPER.

c. Prior to the payment of any reimbursable construction costs by CITY to DEVELOPER, CITY shall collect an administrative fee to defray the costs incurred by the CITY in monitoring, computing, collecting, and disbursing such reimbursable construction costs. Said fee shall be computed as five percent (5%) of the adjusted per-connection cost of the subject FACILITIES pursuant to subsection "4 .b." above. Said administrative fee shall be paid by the party applying to connect to the FACILITIES. The CITY shall not be entitled to collect administrative fees from reimbursable costs owed to DEVELOPER.

d. Following collection of any reimbursable construction costs pursuant to subsection "4.a." above, the CITY shall transmit same to the DEVELOPER, or to any approved assignee, at the address specified in accordance with this Agreement, subject, however, to the provisions of subsection "4.c." above.

5. NOTICES AND PAYMENTS

All written notices and payments to be given or made under this Agreement shall be transmitted by personal delivery or by mail. Payments to DEVELOPER shall be made by CITY check or warrant payable to Rafi Sharon and Joel Rizor and shall be the responsibility of same to distribute such funds as may be appropriate to other parties involved in this development.

Notices or payments given or made by mail shall be addressed as follows:

IF TO THE CITY:

City Engineer
City of Agoura Hills
Public Works Department
30001 Ladyface Court
Agoura Hills, CA 91301

IF TO THE DEVELOPER:

Rafi Sharon
28220 Foothill Drive
Agoura Hills, CA 91301

Joel Rizor
5709 Fairview Place
Agoura Hills, CA 91301

When so addressed, notices or payments shall be deemed given or made upon deposit in the United States Mail, postage prepaid. In all other instances, notices or payments shall be deemed given or made at the time of actual delivery. Changes may be made in the names of persons to whom notices or payments are to be given or made, or in the addresses to which notices or payments are to be given or made, by the giving of notice pursuant to this section.

6. NO ASSIGNMENTS

Neither party may assign or delegate any of its rights or obligations under this Agreement without first obtaining the written consent of the other party.

7. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement between the parties, and this Agreement supersedes all prior negotiations and terminates all prior agreements with respect to the subject matter hereof. With the exception of the insertions or amendments provided for under Section "3.b." hereof, this Agreement shall not be amended or modified except in writing, signed by the parties hereto.

8. FURTHER ACTION

The parties agree to take all further action and to execute all further documents as may be necessary or desirable to effectuate the intent of the provisions of this Agreement.

9. APPLICABLE LAW

This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the State of California.

10. MULTIPLE COUNTERPARTS

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

11. EFFECTIVE DATE AND TERMS OF THE AGREEMENT

a. This Agreement shall become effective and commence as of the date set forth below on which the last of the parties, whether CITY or DEVELOPER, executes said Agreement.

b. From its effective date, this Agreement shall continue in full force and effect for a period of 15 years, unless terminated sooner, upon receipt by DEVELOPER of all reimbursable construction costs provided for herein.

c. Upon termination, this Agreement shall be of no further force or effect, except with regard to accrued obligations, and the CITY shall be released from all further claims, duties, and obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their respective officers thereunto duly authorized.

ATTEST:

CITY OF AGOURA HILLS

By: _____
KIMBERLY RODRIGUES, CITY CLERK

By: _____
DENIS WEBER, MAYOR

By: _____
RAFI SHARON, DEVELOPER

Dated: _____

By: _____
JOEL RIZOR, DEVELOPER

Dated: _____

APPROVED TO IN FORM:

By: _____
CRAIG STEELE, CITY ATTORNEY

Dated: _____

EXHIBIT "A"

DESCRIPTION OF DEVELOPER'S PROPERTY

DEVELOPER'S PROPERTY is described as follows:

<u>ADDRESS</u>	<u>TRACT/PM</u>	<u>BLOCK</u>	<u>LOT</u>	<u>APN</u>
28220 Foothill Drive	Tract 8451	8	32	2055-016-023
5709 Fairview Place	PM 7128		2	2055-020-064

EXHIBIT "A-1"

SITE MAP

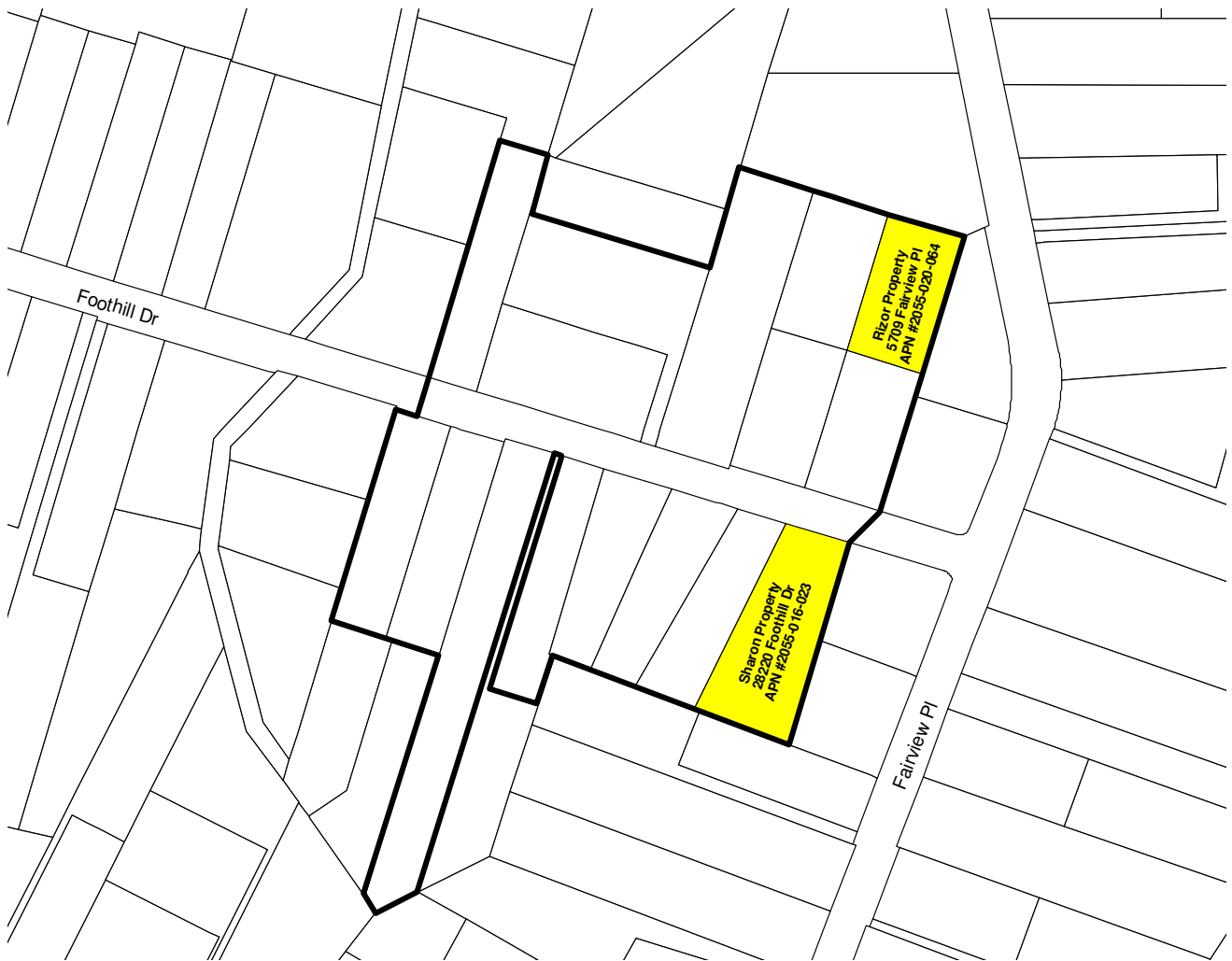


EXHIBIT "B"

AREA OF BENEFIT, BENEFITTED PROPERTIES, AND
PER-CONNECTION SHARE OF COSTS

1. BENEFITTED AREA

A. A map delineating the benefitted area is attached hereto, marked Exhibit "B-1", and incorporated herein by this reference

B. The total number of potential connections in the benefitted area, including the acreage of the PROPERTY owned by the DEVELOPER, is SIXTEEN .

2. PARCELS OR PROPERTIES WITHIN THE BENEFITTED AREA

The following parcels or properties (including the DEVELOPER'S PROPERTY), the legal description of which is more fully set forth in Exhibit "B-1", attached hereto and incorporated herein by this reference, are within the benefitted area:

<u>ADDRESS</u>	<u>APN</u>
5709 Fairview Place*	2055-020-064
28220 Foothill Drive*	2055-016-023
28217 Foothill Drive	2055-020-075
28228 Foothill Drive	2055-016-022
28231 Foothill Drive	2055-020-075
28232 Foothill Drive	2055-016-028
28241 Foothill Drive	2055-020-066
28242 Foothill Drive	2055-016-020
28250 Foothill Drive	2055-016-018
28253 Foothill Drive	2055-020-052
28255 Foothill Drive	2055-020-050
28304 Foothill Drive	2055-016-016
28310 Foothill Drive	2055-016-034
28314 Foothill Drive	2055-016-033
28315 Foothill Drive	2055-020-038
Vacant Property	2055-020-074

*DEVELOPER'S PROPERTY

3. TOTAL REIMBURSABLE CONSTRUCTION COSTS

The maximum total amount of FACILITIES construction costs eligible for reimbursement pursuant to this Agreement (excluding that amount attributable to the DEVELOPER'S parcels or

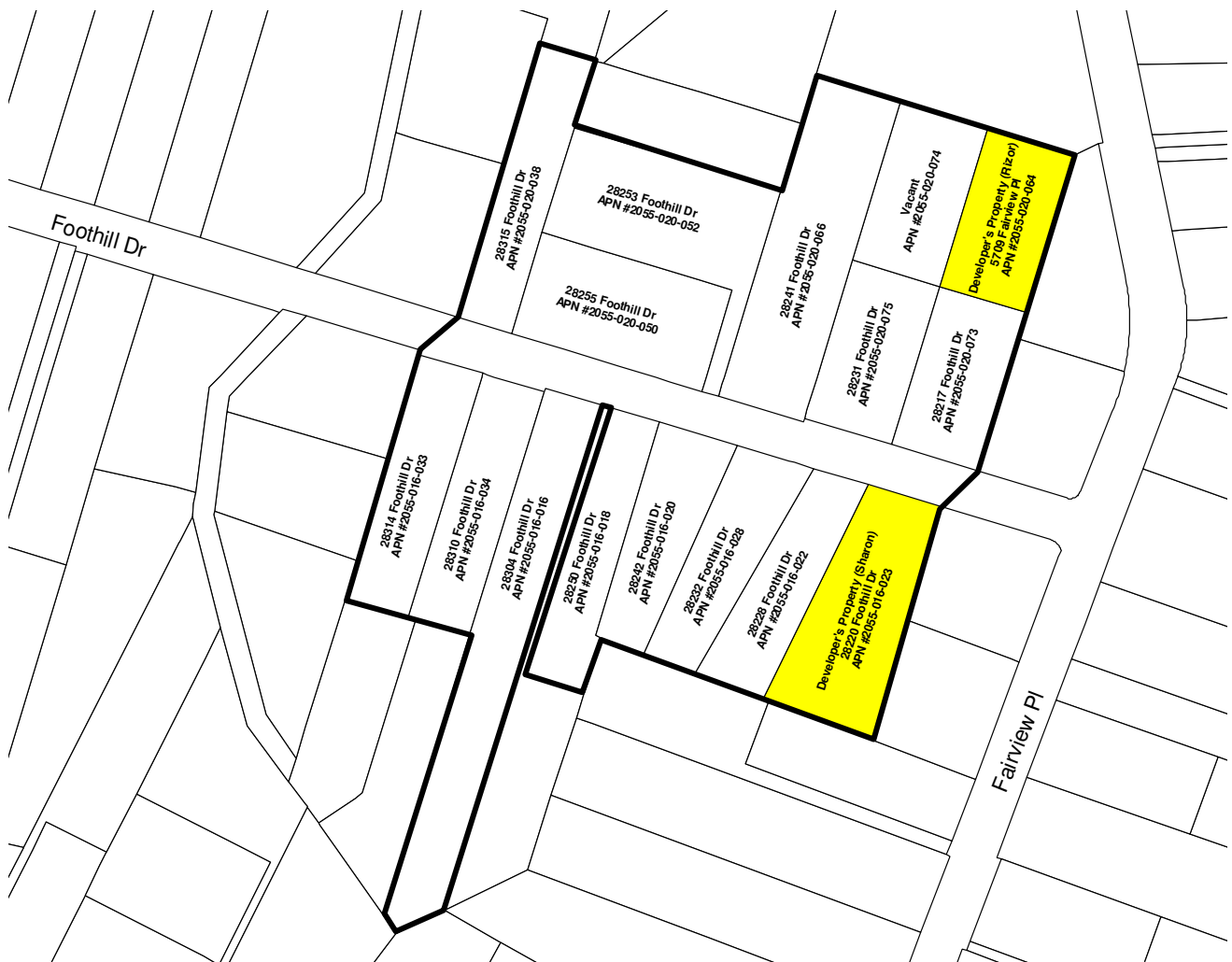
Properties) is \$128,224.00 .

4. PER-CONNECTION COST OF THE FACILITIES

The per-connection cost of the subject FACILITIES is \$8,014 , which is the amount that shall be subject to reimbursement in accordance with the terms and provisions of this Agreement. This amount is calculated as of March, 2009.

EXHIBIT "B-1"

MAP OF BENEFITTED AREA



SEWER REIMBURSEMENT AGREEMENT NO. 09-01

EXHIBIT "B-2"

LEGAL DESCRIPTION OF BENEFITTED PARCELS OR PROPOERTIES

The lots or parcels included within Sewer Reimbursement District No. 09-01 (between the CITY OF AGOURA HILLS and RAFI SHARON & JOEL RIZOR) consists of the following:

Lots 30, 31, and 32 of Block 8; Lots 15, 18, and 19 of Block 7 Tract 8451 and filed in Book 104, pages 79 to 90 of Maps of All Records of Los Angeles County. Lots 1 and 2 of Parcel Map 10397 and filed in Book 111, page 78 of Maps of All Records of Los Angeles County. Lots 2, 3, 4, and 5 of Parcel Map 7128, and filed in Book 81, page 5 of Maps of All Records of Los Angeles County.