

**FIRST AMENDED AND RESTATED
OVERSIZED IMPROVEMENTS
REIMBURSEMENT AGREEMENT
TRACT 3069**

**14" Water Line
10" Sewer Line and Sewer Lift Station
Pavement Upgrade to 11.5 Traffic Index**

This First Amended and Restated Oversized Improvements Reimbursement Agreement ("Agreement") is made as of this __ day of _____, 2023, by and between the City of Paso Robles, California ("City"), and Justin Vineyards & Winery LLC ("Developer"). City and Developer may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

A. Developer obtained approval for a tentative map relating to a subdivision of Tract 3069 known as Justin Winery (the "Project");

B. As a condition of approval for the Project, the City required Developer to install certain improvements to mitigate the impacts of the Project;

C. The City has requested that the Developer install improvements with capacity greater than that needed to serve only the Project, which improvements will benefit both the Project and the City;

D. Specifically, the Project's demands for recycled water would require the installation of 1483 linear feet of 8" waterline for Phase 1 and 1762 linear feet of 8" waterline for Phase 2, and the City has requested that the Developer instead install 535 linear feet of 16" waterline and 1038 linear feet of 10" waterline for Phase 1 (the "Phase 1 Oversized Waterline") and 1762 linear feet of 10" waterline for Phase 2 (the "Phase 2 Oversized Waterline" and together with the Phase 1 Oversized Waterline, the "Oversized Waterline") based on the City Carollo Plan;

E. Developer is willing to pay for the costs of installing the Phase 1 Oversized Waterline subject to the City's agreement to reimburse Developer for the difference in cost between the 8" waterline and the Phase 1 Oversized Waterline and if Developer elects to complete Phase 2 of the Project, then Developer is willing to pay for the costs of installing the Phase 2 Oversized Waterline subject to the City's agreement to reimburse Developer for the difference in cost between the 8" waterline and the Phase 2 Oversized Waterline, in each case pursuant to the terms of this Agreement;

F. Additionally, as a condition of approval for the Project, Developer will need to utilize existing City sewer mains to serve the development. City and Developer recognize that the development cannot feasibly utilize the existing sewer mains without construction of 1483 linear feet of 10" sewer force main line in Phase 1 (the Phase 1

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Sewer Line"), 1762 linear feet of 10" sewer force main in Phase 2 (the Phase 2 Sewer Line"), and the first phase of a regional sewer lift station in Phase 2 (collectively, the "Sewer Lift Station Facilities");

G. It is the desire of City that the Sewer Lift Station Facilities be constructed in sufficient size, capacity, number, or length to serve adjacent real property that is not part of the development ("Oversized Sewer Lift Station Facilities"); and

H. As an additional condition of approval for the Project, due to deteriorative effects that vehicle traffic is anticipated to have on the roadway, Developer is required to provide road paving that meets a Traffic Index ("TI") of 8.0; however, due to changed conditions in the Project area and sound engineering judgment, it is now the desire of the City that the road paving meet a TI of 11.5 ("Oversized Pavement Improvements"); and

I. Developer is willing to pay for the costs of installing the Phase 1 Sewer Line and, if Developer elects to complete Phase 2 of the Project, the Oversized Sewer Lift Station Facilities, subject to the City's agreement to reimburse Developer for seventy-five percent (75%) of the total cost of the Phase 1 Sewer Line and the Oversized Sewer Life Station Facilities, pursuant to the terms of this Agreement; and

J. Developer is willing to pay the additional cost associated with the Oversized Pavement Improvements, subject to City's agreement to reimburse Developer for one hundred percent (100%) of the total cost of the Oversized Pavement Improvements, not to exceed \$294,490.00, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants and consideration contained herein, the Parties mutually agree as follows:

1. **Incorporation of Recitals.** The Parties acknowledge that the above recitals are true and correct, and incorporate those recitals by reference into this Agreement.
2. **Reimbursable Improvements.** The Oversized Waterline, Oversized Sewer Lift Station Facilities, and Oversized Pavement Improvements subject to this Agreement are shown on Exhibit "A," attached hereto and incorporated herein by reference, except that to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Phase 1 Oversized Waterline, the Phase 2 Oversized Waterline, the Phase 1 Sewer Line, the remaining Oversized Sewer Life Station Facilities, and the Oversized Pavement Improvements are referred to collectively herein as the "Reimbursable Improvements" and individually as a "Reimbursable Improvement". The Reimbursable Improvements may be designed, bid, and constructed in two phases, consistent with the phasing plan previously approved by the City for Tract 3069 (referred to herein as "Phase 1" and "Phase 2"). All provisions of this Agreement shall apply separately to Phase 1 and Phase 2. Current estimates of the amounts to be reimbursed to Developer for Phase 1 and Phase 2 are set forth in Exhibit A. Developer may request full reimbursement for a Reimbursable Improvement completed during Phase 1, prior to the initiation of Phase 2. Notwithstanding anything to the contrary herein,

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Developer is not obligated to complete Phase 2 of the Project. The purpose of this Agreement is to set forth the parties' respective rights and obligations regarding the Reimbursable Improvements for Phase 1 and, if Developer proceeds with Phase 2, the Reimbursable Improvements for Phase 2.

3. Design of Reimbursable Improvements.

- 3.1. Developer shall retain an engineer registered in California to design the Reimbursable Improvements described in Exhibit "A" (the "Engineer"). The Engineer shall have experience designing similar facilities. Developer shall cause Engineer to maintain professional liability insurance with limits of not less than \$1,000,000. Professional liability coverage will be on an "occurrence basis" if such coverage is available, or on a "claims made" basis if not available. When coverage is provided on a "claims made basis," Engineer will continue to renew the insurance for a period of three (3) years after this Agreement expires or is terminated. Such insurance will have the same coverage and limits as the policy that was in effect during the term of this Agreement, and will cover Engineer for all claims made by City arising out of any errors or omissions of Engineer, or its officers, employees, or agents during the time this Agreement is in effect.
- 3.2. The plans and specifications for such facilities shall strictly conform to the City's standards and specifications and be reviewed and approved by the City prior to Developer soliciting bids for the construction of the improvements.
- 3.3. Developer understands that the Reimbursable Improvements are public works within the meaning of Part 7 of Division 2 of the California Labor Code (Sections 1720 and following). Accordingly, the specifications shall include language referencing Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on public works projects. Since the construction of the Reimbursable Improvements is a public work as defined in the Prevailing Wage Laws, and since the total cost of the work will exceed \$1,000 or more, Developer agrees to fully comply with and to require its contractors and consultants to fully comply with such Prevailing Wage Laws. In addition, Developer agrees to keep, and require its contractors, subcontractors, and consultants to keep accurate payroll records available for inspection in accordance with all provisions of the Labor Code's Prevailing Wage requirements. Developer shall defend (with counsel reasonable acceptable to the City), indemnify and hold the City, its elected officials, officers, employees, and agents free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any failure or alleged failure of the Developer or its contractors, subcontractors, and consultants to comply with the Prevailing Wage Laws and implementing regulations of the Department of Industrial Relations, including payroll record retention requirements, in connection with construction of the Reimbursable Improvements identified

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in this Agreement. The foregoing indemnity shall survive any termination of this Agreement.

4. **Construction of Reimbursable Improvements.**

- 4.1. Developer shall, upon City approval of the plans and specifications for the Oversized Waterline or the Oversized Sewer Lift Station Facilities, obtain at least three (3) competitive bids for such Reimbursable Improvement described in Exhibit "A." The City reserves the right to review the bids prior to the awarding of the contract for construction related to City participation. If the bid prices for a Reimbursable Improvement is not considered by the City as reasonable construction costs, the Developer shall reject all bids and seek further bids from contractors, and if said bids are lower than the bids obtained through the first solicitation, the City shall pay the lower amount for such Reimbursable Improvement.
- 4.2. Developer shall, however, be permitted to use the contractor who submitted a higher bid and the difference shall be at the Developer's sole cost and expense. Subject to adjustment in accordance with Section 7 of this Agreement, the City's total reimbursement to the Developer for the Reimbursable Improvements shall not exceed one million two hundred thirty-one thousand two hundred and forty-three dollars (\$1,231,243.00).
- 4.3. A City representative shall be present when the bids are opened and shall be given copies of the bids at that time.
- 4.4. Developer shall enter into a contract with the Contractor selected to perform the described work. Said Contractor must hold all of the appropriate licenses and meet all qualifications and experience requirements to perform the work described in the plans and specifications and to satisfy the requirements including but not limited to, bonding and insurance requirements of the City. Developer shall include experience qualifications acceptable to City in the contract documents. Copies of all contracts associated with the Reimbursable Improvements shall be provided to the City prior to commencement of construction, and as a condition of reimbursement.
- 4.5. City shall be notified a minimum of forty-eight (48) hours prior to the commencement of construction. All construction of the Reimbursable Improvements shall meet or exceed industry standards, be lien free, and in compliance with the plans and specifications. All construction of the Reimbursable Improvements described in Exhibit "A" shall comply with all necessary governmental requirements including, but not limited to, obtaining all engineering, plan checks, permits, geotechnical reports, tests, and inspections required in order to complete the project in accordance with the plans and specifications.

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- 4.6. Developer shall complete construction of each Phase 1 Reimbursable Improvement described in Exhibit "A" in a timely manner consistent with the phasing plan previously approved by the City for Tract 3069 attached hereto in Exhibit A. If Developer elects to construct the Phase 2, then Developer shall complete construction of such Phase 2 Reimbursable Improvements described in Exhibit "A" in a timely manner consistent with the phasing plan previously approved by the City for Tract 3069 attached hereto in Exhibit A. A Reimbursable Improvement shall not be deemed complete until approved and accepted by the City. Upon substantial completion of a Reimbursable Improvement, Developer shall notify the City Engineer of its desire for an improvement permit sign-off for such Reimbursable Improvement. The City Engineer shall, within fourteen (14) days of such notice, inspect such Reimbursable Improvement and provide the Developer with written notice of any construction defects identified by the City Engineer. Developer shall remedy all construction defects for such Reimbursable Improvement and provide the information required by the City's Standard Details and Specifications, Section 111-3, *Acceptance of Public Improvements*. Within thirty (30) days of the Developer satisfying such obligations, the City Engineer will use best efforts to cause an item to be added to the City Council agenda relating to acceptance of such Reimbursable Improvement and will make a written recommendation to the City Council to accept such Reimbursable Improvement (an "Acceptance Recommendation"). The City Council shall use best efforts to act upon an Acceptance Recommendation within 30 days from the date of the City Council meeting on which the City Engineer caused an item to be added to the City Council agenda with the Acceptance Recommendation. Acceptance by the City Council shall not constitute waiver of defects by City.
- 4.7. Developer warrants each Reimbursable Improvement against any defective work or labor done, or defective materials furnished in the performance of this Agreement (the "Warranty") for a period of one (1) year following the date of the City Council meeting on which the City Engineer provides the Acceptance Recommendation to the City Council for such Reimbursable Improvement (the "Warranty Period"). This section shall survive the expiration or termination of this Agreement. Should any failure of a Reimbursable Improvement, or any parts thereof, occur within the Warranty Period for such Reimbursable Improvement, the City shall have the right to seek correction or cure of the defective situation from Developer if such failure or defect is covered by the Warranty.
5. **Acquisition of Right-of-Way.** Except as required under Section 66462.5 of the Subdivision Map Act (Government Code Section 66462.5), to the extent that City does not already possess sufficient rights-of-way or other interests in land necessary to complete the Reimbursable Improvements, the acquisition of such right-of-way or other appropriate interests in land shall be the sole responsibility of Developer.

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6. **Documentation of Costs.** Within ninety (90) days of completion of a Reimbursable Improvement and the City's formal acceptance of such Reimbursable Improvement, Developer shall provide the necessary documentation as defined in "Exhibit B," which is attached hereto and incorporated by reference, in order to allow City to reconcile the Engineer's current estimate of costs and the actual costs for such Reimbursable Improvement. City shall be relieved from its reimbursement obligations for costs that are not substantiated in accordance with this Section 6.
7. **Reimbursement.** The City shall reimburse Developer its costs for a Reimbursable Improvement after acceptance of such Reimbursable Improvement by the City and Developer's provision of all documents and information required under this Agreement; provided that the maximum amount to be reimbursed for all Reimbursable Improvements shall not exceed one million two hundred thirty-one thousand two hundred and forty-three dollars (\$1,231,243.00).as set forth in Exhibit A (the "Maximum Cost"). The Parties acknowledge that the Maximum Cost is the current Engineer's estimate for the Reimbursable Improvements and that the actual cost for the Reimbursable Improvements may change based upon the construction bids. Once a construction bid has been selected, the Maximum Cost shall be adjusted by the Parties by way of written change order to this Agreement so long as the amount is substantiated by documentation required by Section 6 of this Agreement and does not exceed Fifteen Percent (15%) of the Maximum Cost. In addition, the Parties acknowledge that the costs for the Reimbursable Improvements may increase during the course of construction due to unanticipated conditions, acts of God, or other force majeure events outside the reasonable control of the Developer or its contractor. Any such cost increase shall be born solely by the Developer unless the Developer presents the increase to the City in a written change order and the City approves the change order in writing. The City may approve such a change order at its sole discretion. The City shall not compensate Developer for any change orders not approved in advance by the City.
8. **Alterations to Reimbursable Improvements.** This Agreement shall not be construed to limit the right of the City to enlarge, relocate, alter, or extend the Reimbursable Improvements, provided the City shall pay for any additional improvement costs in the event the City enlarges, relocates, alters, or extends the Reimbursable Improvements, nor shall it be construed as a grant to the Developer of any right to any exclusive use or specific capacity in or to the Reimbursable Improvements.
9. **Binding on Successors in Interest.** Each and every provision of this Agreement shall be binding and inure to the benefit of the successors in interest of the Parties.
10. **Indemnity.**
 - 10.1. Developer agrees to save, defend, protect, and hold harmless City and its elected and appointed officials, officers, agents, and employees from and against any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees (at market rates), for injury or death of any person,

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or damage to property, or interference with use of property, arising out of or in any way connected with Developer's performance pursuant to this Agreement or performance pursuant to this Agreement by agents, officers, employees, contractors, subcontractors, or independent contractors hired by Developer. The only exemption to Developer's responsibility to save, protect, defend, and hold harmless City is due to the sole negligence or willful misconduct of City. This hold harmless provision applies to all liability regardless of whether any insurance policy applies. The policy limits of such insurance, if any applies, do not limit the amount of indemnification to be provided by Developer.

10.2. City shall not be liable for any defect, error, or omission in or relating to the plans and specifications for any Reimbursable Improvement constructed by Developer. To the extent that any defect, error, or omission relating to the design or engineering of such Reimbursable Improvement is discovered at any time, the Developer, on behalf of itself and its successors-in-interest, and their respective employees, contractors and agents, hereby releases and absolutely discharges forever, and hereby agrees to indemnify, protect, hold harmless, and defend City (with counsel reasonably acceptable to the City), its elected and appointed officials, officers, agents, and employees, and its successors and assigns, from costs and expenses (including reasonable court costs and market rate attorneys' fees) arising from or relating to such defects.

11. Insurance. Before commencing performance under this Agreement, and at all other times this Agreement is effective, Developer must procure and maintain and cause its contractor to procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

<u>11.1. Type of Insurance</u>	<u>Limits</u>
Commercial general liability:	\$2,000,000.00
Workers compensation	Statutory requirement

11.2. Commercial general liability insurance must meet or exceed the requirements of ISO-CGL Form No. CG 00 01 11 85 or 88 or equivalent. The amount of insurance set forth above will be per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies must be endorsed to name City, its officials, and employees as "additional insureds" under said insurance coverage and to state that such insurance will be deemed "primary" such that any other insurance that may be carried by City will be excess thereto. Such endorsement must be reflected on ISO Form No. CG 20 10 11 85 or 88 or equivalent. Such insurance will be on an "occurrence," not a "claims made," basis and will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to City. Required limits may be provided by a combination of primary and umbrella/excess policy limits.

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- 11.3. Developer must furnish to City duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement and such other evidence of insurance or copies of policies as may be reasonably required by City from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII." Certificate(s) must reflect that the insurer will provide thirty (30) day notice of any cancellation of coverage.
12. **Lien Release.** Prior to the release of any funds to Developer from City for completion of a Reimbursable Improvement, Developer must file a Notice of Completion and obtain final lien releases from all contractors, subcontractors, and suppliers that have filed a Preliminary Notice related to the construction of such Reimbursable Improvement.
13. **Payment (Labor and Materials) Bond.** Developer must require its Contractor to obtain and maintain a payment (labor and materials) bond. Concurrently with the execution of its agreement with the Contractor for construction of a Reimbursable Improvement, Developer shall require Contractor to furnish a surety bond in an amount equal to at least one hundred percent (100%) of the estimated cost of such Reimbursable Improvement as security for claims arising under this Agreement in a form substantially similar to Exhibit C, which is incorporated herein by reference, and Government Code § 66499.2. It is understood and agreed that, in the event the actual cost of a Reimbursable Improvement exceeds the estimated costs of such Reimbursable Improvement, Developer shall in no way relieve the Contractor by this bond or the agreement from the obligation of providing a bond in the amount of such excess and all obligations detailed in the Agreement. The cost of such surety bond is included in the Maximum Amount as set forth in Exhibit A.
14. **Notice.** Written notice, whenever required by this Agreement, shall become effective upon personal service or deposit in the United States mail, postage prepaid, addressed to the following:

CITY:

DEVELOPER:

Attn: City Manager
City of Paso Robles
1000 Spring Street
Paso Robles, California 93446

Attn: Steve Beard and General Counsel
Justin Vineyards & Winery LLC 11680
Chimney Rock Road
Paso Robles, CA 93446

Either Party may update its address and contact information by providing written notice of the new information to the other Party.

15. **Contact Information for Developer.** It shall be Developer's responsibility to keep City apprised of Developer's address during the term of this Agreement. In the event the City is unable to locate the Developer at the time that any reimbursements are due, the City shall hold such fees for the benefit of the Developer or its successor or assignee for a period of one year, commencing upon the date of acceptance of all Reimbursable Improvements by City. Following this one-year period, any fees

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not reimbursed to the Developer shall escheat to the City and, except as otherwise set forth herein, the City shall have no further obligations to Developer pursuant to this Agreement.

16. **Cooperation.** The Parties hereto acknowledge that it may be necessary to execute additional documents in order to complete the design and construction of the Reimbursable Improvements. The Parties hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete the design and construction of the Reimbursable Improvements in accordance with the intent of the parties that is evidenced by this Agreement.
17. **Easements.** Developer shall grant to City, at no cost to City, such easements and rights-of-way within the subdivision as may be reasonably required by the City for construction of a Reimbursable Improvement by Developer.
18. **Captions and Counterparts.** The captions of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
19. **Waiver.** No covenant, term, or condition of this Agreement shall be deemed to be waived by any party hereto unless such waiver is in writing and executed by the Party making the waiver. No waiver of a breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant, or condition herein contained.
20. **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article, or other portion of this Agreement shall become illegal, null, or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.
21. **Inconsistencies and Ambiguities.** This Agreement is to be deemed to have been prepared jointly by the Parties hereto with advice of counsel and, if any inconsistencies or ambiguities exist herein, they shall not be interpreted or construed against any particular party as the drafter.
22. **Applicable Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of California. This Agreement shall be deemed made and entered into in San Luis Obispo County, which shall also be deemed to be the sole proper venue for any action or proceeding relating to this Agreement.

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23. **No Third-party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto and the respective successors and assigns, any rights or remedies under by reason of this Agreement.
24. **Attorneys' Fees.** If any legal action, arbitration, or other proceeding is initiated for the enforcement or interpretation of this Agreement or because of any alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, witness fees, and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
25. **Authority to Contract.** Each party and its respective agents executing this Agreement warrants and represents that it has full power and authority to execute, deliver, and perform the obligations under this Agreement, and that each party's performance hereunder has been duly authorized by all requisite actions on the part of that party.
26. **Entire Agreement.** This Agreement embodies the entire understanding and agreement between the Parties pertaining to the matters described herein and supersedes and cancels all prior oral or written agreements between the Parties with respect to these matters. Each Party acknowledges that no party, agent, or representative of the other party has made any promise, representation, or warranty, express or implied, not expressly contained in this Agreement, that induced the other Party to sign this document.
27. **Force Majeure.** Except for payment obligations, neither party will be liable for failure or delay in performance of any of its obligations under or in connection with this Agreement arising out of any event or circumstance beyond that party's reasonable control, including without limitation an Act of God, fire, flood, war, act of terrorism, riot, civil commotion, adverse weather condition, pandemic, governmental order, strike, lock-out or other industrial action.

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IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written by the parties as follows:

CITY OF PASO ROBLES

JUSTIN VINEYARDS & WINERY LLC

By: _____
Ty Lewis,
City Manager

By: _____
Craig B. Cooper,
EVP

ATTEST:

By: _____
Melissa Boyer,
City Clerk

Exhibit A

**EXHIBIT A
TRACT 3069 AMMENDED REIMBURSEMENT AGREEMENT
OVERSIZE PAVEMENT COST ESTIMATE**

Exhibit A: Summary of Costs to Increase TI from 8.0 to 11.5	
Item Description	Cost to City
Modify subgrade	\$33,410.00
Add 5" of Class 2 Base	\$65,400.00
Additional trucking cost ofr Class 2 Base	\$6,600.00
Install additional hot mix asphalt	\$189,080.00
Total cost to City	\$294,490.00

EXHIBIT B REIMBURSABLE IMPROVEMENTS

DOCUMENTATION TO BE PROVIDED TO CITY BY DEVELOPER FOR DETERMINATION OF CONSTRUCTION COSTS

To assist City in determining the costs for the completed Reimbursable Improvement, Developer shall provide the following documents to City:

1. Plans, specifications, and Developer's civil engineer's cost estimate;
2. List of bidders from whom bids were requested;
3. Construction schedules and progress reports;
4. Contracts, insurance certificates, and change orders with each contractor or vendor;
5. Invoices received from all vendors;
6. Cancelled checks for payments made to contractors and vendors (copy both front and back of cancelled checks);
7. Spreadsheet showing total costs incurred in and related to the construction of the Reimbursable Improvement and the check number for each item of costs and invoice;
8. Final lien releases from each contractor;
9. Such further documentation as may be reasonably required by City to evidence the completion of construction and the payment of each item of costs and invoice.

EXHIBIT C

Bond No. _____

**CITY OF PASO ROBLES
SAN LUIS OBISPO COUNTY, CALIFORNIA**

**PAYMENT BOND
(Labor and Materials)**

Project No.: _____

WHEREAS, the _____, ("Principal") agree they are bound by the OVERSIZED IMPROVEMENT REIMBURSEMENT AGREEMENT ("Agreement" attached hereto as Exhibit "A") with the CITY OF PASO ROBLES, a municipal corporation ("City"), whereby Principal agrees to construct, install, and complete certain designated public improvements generally identified as follows: installation of oversized water line, oversized sewer lift station facilities, and oversized pavement improvements as further detailed in Exhibit "A," and

WHEREAS, said Agreement is incorporated herein by this reference; and

WHEREAS, under the terms of the Agreement, the Principal is required before entering upon the performance of the work, to file with the City a good and sufficient payment bond to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code, and in Government Code Section 66497;

NOW, THEREFORE, the Principal and the undersigned as Surety, are held firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of said Agreement and referred to in the above-referenced Civil Code and Government Code in the sum of one million two hundred thirty-one thousand two hundred and forty-three dollars (\$1,231,243.00). for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3, (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, and under Government Code Section 66497, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, the work to be performed thereunder, or the approved plans, or conditions required under necessary permits (including but not limited to any encroachment permits), and related specifications accompanying the Agreement shall in any

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manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the above-named Principal and Surety as of the date or dates set forth below the signatures of their authorized officers.

NOTE: All signatures must be acknowledged before a notary public. Attach appropriate acknowledgment.

CITY

PRINCIPAL

APPROVED:

City Manager

(Type Name of Principal)

APPROVED AS TO FORM:

(Street Address)

ELIZABETH HULL
City Attorney

(City) (State) (Zip)

By: _____
(Signature of Authorized Officer)

(Title of officer)

Date: _____

SURETY

(Type Name of Surety)

(Street Address)

(City) (State) (Zip)

By: _____
(Signature of Authorized Officer)

(Title of Officer)

Date: _____