



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Consent
October 2, 2007

Honorable Mayor and
Members of the City Council

Title: Reimbursement Agreement for water main installation (18th and L mixed used development- 1801 L Street Project

Location/Council District: 1801 L Street / District 3

Recommendation: Adopt a **Resolution** authorizing the City Manager to execute the attached agreement with 1801 L Street Associates LP ("Owner") in an amount up to \$191,127 for the costs related to the design and construction of the replacement water main at 1801 L Street.

Contact: Jim Rinehart

Presenters: n/a

Department: Economic Development

Division: Citywide

Organization No: 4453

Description/Analysis

Issue: The 1801 L Street project has been in the development process for many years and has overcome a multitude of hurdles over those years. There was insufficient water pressure around this project and the Owner was required to replace a water main as part of the conditions of approval. On October 19, 2004 City Council relieved the project applicant of the condition to replace the water main. Subsequently, although no longer legally required to do so, Owner replaced the water main. The City determined the necessity of replacing the water main and the replaced water main is for the benefit of the City and is owned by the City.

Policy Considerations: The project supports the City of Sacramento goals by increasing the revenue to the City and providing infill housing options for residents. This project was a catalyst project by bringing 176 units and 9,600 square feet of retail into the central city promoting a good jobs/housing balance.

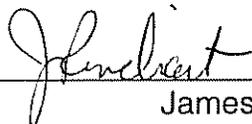
The City of Sacramento supports such projects to make Sacramento become the most livable City in America. Approval of the subject recommendation serves to promote this City policy objective and furthers the economic growth of the City of Sacramento.

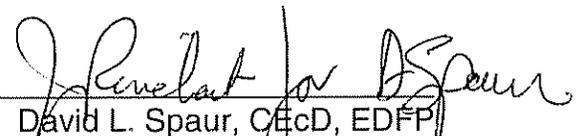
Environmental Considerations: This project was subject to the environmental review process and received all approvals as part of its development application

Rationale for Recommendation: The City finds that the project will be of general public benefit to the public. City funding of the project is needed because the timing of the installation of the water main was critical to the completion of the project. The City Council previously relieved the requirement that the Owner pay for the construction of the water main as part of this project and would be responsible for the costs of that improvement.

Financial Considerations: The funds for the water main will be made available in the Economic Development Capital Improvement Project ZO07. There is sufficient funding in 413 for the reimbursement of costs in an amount not to exceed \$191,127.

Emerging Small Business Development (ESBD):

Respectfully Submitted by: 
James Rinehart
Citywide Economic Development Manager

Approved by: 
David L. Spaur, CECD, EDFP
Economic Development Director

Recommendation Approved:


Ray Kerridge
City Manager

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BACKGROUND:

- The 1801 L Street project was originally submitted as part of the Sacramento Housing and Redevelopment Agency's (SHRA) 1998 Notice of Funding Availability with 152 apartments and 9,600 square feet of retail space over a subterranean garage. Funding for the project was approved for \$4 million
- In May 2000, the SHRA approved providing \$1.6 million to allow the Owner to acquire the property. The Owner applied through the California Debt Limit Allocation Committee for the bonds to pay for the project and received \$21,075,000.
- The original project budget was \$29,575,000 in 1999. Due to a variety of issues the project budget ended up at \$37,500,000 in 2004. With these increases the project needed additional help from the City of Sacramento.
- The City provided fee waivers and deferrals in the amount of \$525,515 as part of the October 5, 2004 Council action.
- One of the pieces of that approval was the waiver of the requirement to improve an off-site water main in the amount of \$191,127.

**REIMBURSEMENT AGREEMENT FOR WATER MAIN INSTALLATION
(18th and L Mixed-Use Development - 1801 L Street)**

THIS AGREEMENT ("Agreement") dated for reference purposes only as of _____, 2007, is by and between the CITY OF SACRAMENTO, a charter municipal corporation (the "City") and 1801 L Street Associates, LP, a California limited partnership ("Owner"). The City and Owner are sometimes individually referred to as a "Party" or collectively referred to herein as the "Parties."

RECITALS

A. Property. Owner is the owner of that certain real property located in the City of Sacramento, State of California, as more particularly described in the attached **Exhibit A** (the "Property"). The Property consists of approximately 1.72 acres and is located at 1801 L Street.

B. On August 26, 1999, the City's Planning Commission approved, with conditions, P98-123. The 1801 L Street Building is a mixed use project located on 1.72+/- acres on the north side of L Street between 18th and 19th Streets. The 260,000 square foot building includes 164 residential units, 12 live/work units, approximately 10,000 square feet of ground level retails space, a 154-space private subterranean parking lot and a 16,000 square foot courtyard. The project provides for 20% of the units to be affordable to households making 50% of the median income and an additional 9 units to be affordable to households making 110% of the median income.

C. Conditions of approval of P98-123 require the construction and installation of certain public improvements in and around the Project site to serve the Project. The improvements were to benefit to the surrounding community in general. The improvements include the dedication of right-of-way and construction of roadway improvements, the extension of sewer, water, and storm drain lines and the replacement of a water main.

D. On October 19, 2004, pursuant to Council Resolution 2004-814, the City Council relieved the Owner of the condition requiring the replacement of a water main for the 1801 L Street project. At that time, the estimated cost for the water main was \$191,127.

E. Subsequently, although under no obligation to do so, Owner replaced the water main.

F. The replaced water main benefits the City and is owned by the City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the City and Owner agree as follows:

1. Upon full completion of the construction of the replacement water main, and upon City acceptance of the replacement water main, Owner shall be entitled to reimbursement for a portion of the cost to replace the water main incurred by Owner in accordance with the terms of this agreement. The City's obligation to reimburse Owner under this Agreement shall not exceed the amount of One-Hundred Ninety-One Thousand One Hundred Twenty-Seven Dollars (\$191,127.00) ("Maximum Reimbursement Amount").

2. The cost to replace the water main shall mean and include actual costs related to all contracts for the construction of the water main, including change orders and costs associated with all other contracts for professional and other services necessary, in the City's judgment, to implement and complete construction, including costs for preparing budgets and estimates, planning, engineering, and design costs, engineering estimates, and plan check and construction inspection fees.

3. City shall not make any reimbursement payment to Owner for the cost to replace the water main under this Agreement except as provided in this Section 3. Upon full and final acceptance of the water main by City, Owner may submit to City a claim for reimbursement in a form acceptable to City containing the following:

A. All documentation substantiating the cost of the water main reasonably requested by the Director of City's Economic Development Department, or his or her designee (the "Director").

B. Evidence that all of the costs of the water main for which reimbursement is sought have been fully paid, including all lien claims. If required by and in forms acceptable to the Director, Owner shall provide such notices of completion and/or general lien releases as the Director may deem necessary to assure that payment of outstanding claims of the Owner's contractors, subcontractors, and suppliers have been paid.

C. Director shall review the claim for reimbursement, with all supporting documentation, and make a determination, in his or her sole discretion, of the total amount of the cost to replace the water main that may be considered for reimbursement under this Agreement, which amount shall fairly reflect the actual cost of constructing the water main incurred by Owner. The Director shall notify the Owner of his or her determination, with an accounting of any costs submitted but not allowed and an explanation of why the costs were not allowed. The Director shall then authorize reimbursement of the cost to replace the water main up to the Maximum Reimbursement Amount. In no event shall the reimbursement amount exceed the cost of replacing the water main as determined by the Director or the Maximum Reimbursement Amount, whichever is less.

D. No interest shall accrue on any amounts to be paid or paid by City to Owner under this Agreement.

4. Owner acknowledges and agrees that any and all obligations of the City arising out of or related to this Agreement are special and limited obligations of the City, and the City's obligations to make any payments hereunder are restricted entirely to the Maximum Reimbursement Amount stated in Section 1. Owner further acknowledges and agrees that the Maximum Reimbursement Amount stated in section 1 is not intended to be sufficient to reimburse Owner for the full cost of constructing and installing the water main but is a partial reimbursement only.

5. Nothing in this Agreement shall be construed to create an obligation of, or be attributable to, City's general or special funds, or any other funds in the hands of City or its accounts now and in the future, except as otherwise expressly provided herein. City's obligation hereunder to provide reimbursement is limited to the following sources of funds, to the extent funds are appropriated and available and not otherwise committed for reimbursement by the City to others:

- A. Economic Development Capital Improvement Funds:
- B. Major Roads Fund:
- C. Economic Development Assistance Program Funds:

6. This Agreement shall not constitute nor create any form of association, joint venture, partnership or cooperative activity of any nature between City and Owner. This Agreement shall not constitute nor create a trust, expressed or implied, for the benefit of Owner or any other party. City shall have no fiduciary duty to Owner or any other party with respect to any obligation created or anticipated by this Agreement and any funds or other source of reimbursement. The City's obligations hereunder do not constitute a legal or equitable debt, pledge, charge, lien, or encumbrance upon any of the City's property or upon its income, receipts, or revenues.

7. **Ownership of Project.** City and Owner acknowledge that the completed water main will be the property of the City.

8. **General Provisions.**

A. **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by U.S. Express Mail or commercial overnight courier that guarantees next day delivery and provides a receipt, or (d) upon successful transmission by facsimile, and such notices shall be addressed as follows:

Owner: Sotiris K. Kolokotronis
1801 L Street Associates, LP
c/o CNM Construction Company Inc.
730 Alhambra Boulevard, Suite 222
Sacramento, CA 95816

City: Jim Rinehart
Economic Development Department
City of Sacramento
1030 15th Street Ste. 250
Sacramento, CA 95814

B. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties. This Agreement may not be assigned by the Owner without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of the City, the City may condition its consent upon the acceptability of the financial condition of the proposed assignee and upon any other factor which the City deems relevant in the circumstances.

C. Amendments. This Agreement may be amended or modified only by a written instrument signed by the City and Owner.

D. Governing Law. This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of California.

E. Merger of Prior Agreements. The Agreement, together with the attached exhibits, contain any and all representations, warranties, and covenants made by the City and Owner and constitutes the entire understanding between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement.

F. Interpretation of Agreement. The section and other headings of this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained in this Agreement. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other gender and neuter. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

G. Unavoidable Delay. If the performance of any act required of the City or Owner is directly delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the Party required to perform an act, that Party shall be excused from performing that act for the period of time equal to the period of time of the delay. If the City or Owner claims the existence of such a delay, the Party claiming the delay shall notify the other Party in writing of that fact within (10) days after the beginning of the claimed delay.

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

I. Effective Date. As used in this Agreement, the term "Effective Date" shall mean the date on which both Owner and City have fully executed this Agreement.

J. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

K. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

OWNER:
1801 L Street, LLC, a California
limited liability company

By: _____

Title: _____

APPROVED AS TO FORM:

CITY OF SACRAMENTO:

By: _____
Deputy City Attorney

By: _____

ATTEST:

City Clerk

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVAL FOR THE REIMBURSEMENT AGREEMENT FOR WATER MAIN INSTALLATION

BACKGROUND

- A. The 1801 L Street project was originally submitted as part of the Sacramento Housing and Redevelopment Agency's (SHRA) 1998 Notice of Funding Availability with 152 apartments and 9,600 square feet of retail space over a subterranean garage. Funding for the project was approved for \$4 million
- B. In May 2000, the SHRA approved providing \$1.6 million to allow the Owner to acquire the property. The Owner applied through the California Debt Limit Allocation Committee for the bonds to pay for the project and received \$21,075,000.
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BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager is authorized to execute the attached Agreement with 1801 Associates, LP, to reimburse 1801 L Street Associates LP in an amount up to \$191,127 for the costs related to the design and construction of the replacement water main at 1801 L Street.

