

South Placer Municipal Utility District Code

Chapter 4 - Credit and Reimbursement Agreements

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CHAPTER 4 CREDIT AND REIMBURSEMENT AGREEMENTS

4.00 Purpose

This Chapter in whole or in part is based on excerpts from Ordinance 15-01 adopted by the Board of Directors on August 6, 2015 and shall govern 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 Code 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.

CHAPTER 4 .01 DEFINITION

4.01.001 Applicant

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 Code with respect to the acquisition or construction of Major Facilities, a portion of which benefits the applicant's property.

4.01.005 Benefit Area

The area comprising all lands benefited by the improvements, or any portion thereof, acquired or constructed pursuant to this Code with respect to which a reimbursement agreement has been entered into.

4.01.010 Benefitted Property

Any parcel or parcels of improved or unimproved real property benefited by any improvement, or any portion thereof, acquired or constructed pursuant to this Code with respect to which a reimbursement agreement has been entered into.

4.01.015 Board

Board of Directors of the South Placer Municipal Utility District (District).

4.01.020 District

The South Placer Municipal Utility District, a statutorily created district operating under the authority of and pursuant to the provisions of the California Municipal Utility District Act (Public Utility Code commencing at Section 11501 et seq).

4.01.025 District General Manager

The General Manager as appointed by the Board of Directors of the South Placer Municipal Utility District in accordance with the California Municipal Utility District Act (Public Utility Code commencing at Section 11501 et seq) or any District employee or agent of the District authorized by the General Manager to act on their behalf to enforce the provisions of this code.

4.01.030 District Specifications

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 and as delineated in Chapter 5 of this Code. All work associated with wastewater systems shall be performed pursuant to and in compliance with this Code and the District Specifications.

4.01.035 Trunk Sewer Mains and Major Facilities

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 Code.

4.01.040 Person

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.

4.01.045 Participation Charge

The Sewer Participation Charge as contained in 2.03, Charges and Fees, 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.

4.01.050 Property Owner

The record owner of the real property upon which is being served or to be served by the District's Wastewater system.

4.01.055 Wastewater Collection System

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.

4.01.060 Wastewater System

All facilities for collecting, pumping, treating and disposing of wastewater.

CHAPTER 4 .02 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.

CHAPTER 4 .03 CREDITS

Upon application by the property owner or the property owner's authorized representative, the District may authorize credit for the construction of any eligible Trunk Sewer Mains or Major Facilities, described in 4.01.035 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.

4.03.001 Construction Costs Allowable for Credit

- A. Trunk Sewer Mains: The amount of credit for construction of Trunk Sewer Mains shall be computed solely upon the quantity of Trunk Sewer Main actually installed using a Schedule of Values for Pipeline Construction Costs adopted by Board

Resolution, plus eight (8) percent of that amount. The eight percent (8%) of the allowable credit is an offset for engineering costs. Competitive bidding or actual costs shall not be used as a basis for the credit determination. Credit for change orders shall be limited to an adjustment of creditable quantities to reflect actual final installed quantities. Credit shall not be allowed for other change orders or claims.

- B. 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.
- C. 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.
- D. 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.

4.03.002 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.

4.03.003 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.

4.03.004 Participation Charge Credit

Credits allowed pursuant to this Code 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 Chapter shall be reimbursed in accordance with 4.04001.

4.03.005 Divided Parcel Credit

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

4.03.006 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.

4.03.007 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.

CHAPTER 4 .04 REIMBURSEMENT AGREEMENTS

4.04.001 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 Code.
- D. The Applicant has paid all fees required by the Code.
- 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 reimbursement charges from the Benefit Area or Benefitted Property. Nothing herein contained shall require the District to segregate reimbursement charges collected by the District from general funds of the District or to maintain special funds or accounts for such charges.
 - K. The maximum term of any reimbursement agreement authorized by this Code shall be ten (10) years. Upon expiration of the term, all obligations of the District thereunder to collect the reimbursement charge and to reimburse the applicant shall cease.

4.04.002 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 there from 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 Code 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.

CHAPTER 4 .05 MISCELLANEOUS PROVISIONS

4.05.001 Conflicts

In the event of a conflict between any provision of this Code 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 Code shall prevail except in cases where Federal or California law provide otherwise.

4.05.002 Severability

It is hereby declared that in the event any provision or section of this Code is declared void or invalid by any Court of competent jurisdiction, that the remaining sections of the Code 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 Code irrespective of any provision which may be declared null and void.

4.05.003 Vested Contractual Rights Not Affected

No provision of this Code 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 Code.