

ORDINANCE 76

PRO RATA REIMBURSEMENT AGREEMENT AN ORDINANCE REGULATING REIMBURSEMENT FOR SEWER EXTENSION FUNDED BY RAUL GARCIA; PROVIDING THE FEES; PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF BAYSIDE:

The Town of Bayside, Texas, hereinafter called "the City," and Raul Garcia, hereinafter called "the Developer," hereby agree to the following:

I

The Developer intends to construct an 6"sewer collection line in the Town of Bayside, Texas, from the intersection of Third Street and FM 1257 to a point approximately 221' South on FM 1257. It is agreed that Developer shall be entitled to be reimbursed up to \$5000.00 of the project costs over the term of this Agreement.

II

Said improvements shall belong to the City upon completion and acceptance by the City, and said City shall have exclusive jurisdiction over the same, subject to the terms of this Agreement. Developer and the City, at their sole cost and expense, shall install the 6" sewer line according to pre-approved City engineering specifications.

III

For the term of this Agreement, property owners who desire to connect to the above described sewer line shall pay a pro rata fee of \$1000.00 to the City, in order to pay for their applicable portions of costs associated with the construction of said sewer line. There will not be a pro rata fee after the developer is reimbursed the total amount agreed upon or after the agreement has expired, which ever comes first. For the term of this Agreement, the City shall pay to the Developer pro rata fee received until the Developer receives up to \$5000.00 of the construction and other costs incurred for constructing said sewer line.

IV

This Agreement for the pro rata reimbursement to the Developer for the sewer main shall not exceed fifteen (15) years and shall expire at 12:01 a.m. fifteen (15) years from the date of completion and acceptance as determined by the City. The City shall reimburse the Developer within thirty (30) days after receipt of any or all pro rata funds. There shall be no interest, and no interest shall accrue, on this reimbursement provision.

V

The City shall make all connections to the sewer line. The City shall have, and this Agreement does not in any way limit, the right for City to charge, collect and keep all City charges set by City ordinance for monthly usage and/or tap fees for customers connected to and served from the sewer line after the date of its acceptance. Developer is not exempt by this Agreement from such charges.

VI

The City shall be exempt from any and all contractual connect fees set forth above, and explicitly reserves the right to subsequently extend an additional sewer line to this project and to connect thereto at its southernmost end during the term of this Agreement without liability to nor prior permission required of Developer.

VII

The parties hereto agree that any proceeds paid pursuant to this Agreement do not constitute an impact fee as defined in Chapter 395 of the Texas Local Government Code, as amended, and that such proceeds are pro rata fees specifically authorized pursuant to Section 395.001 (4) of the Texas Local Government Code, as amended.

VIII

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Refugio County, Texas, Venue for any action arising under this Agreement shall lie in Refugio County, Texas.

IX

Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the City: Town of Bayside
P. O. Box 194
909 First St.
Bayside, TX 78340

If to the Developer: Raul Garcia
P.O. Box 138
Gregory, Texas 78359

X

In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

XI

This agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party. Further, this Agreement shall be deemed to run with the land.

XII

Invalidation of anyone of the provisions of this Agreement by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

XIII

In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonable possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

XIV

This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The Developer warrants and represents that the individuals executing this Agreement on its behalf have full authority to execute this Agreement and bind the Developer to same.

XV

If any provision, section, sentence, clause or phrase of this ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the Town Council in adopting this ordinance that no portion hereof, or provisions or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality of any other portion hereof, and all provisions of this ordinance are declared severable for that purpose.

XVI

This ordinance shall be in full force and effect as soon as all necessary publication requirements have been met.

Passed, ordained, approved and adopted this the 8th day of June, 2004.

Attest:

Connie Cramer
City Secretary

By: Billy Pruitt
Mayor - Town of Bayside

Accepted by:

Raul P. Davis
Developer