



Legislation Text

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For City Council Meeting [September 24, 2019]

TO: Honorable Mayor and City Council

APPROVAL: Rod Foster, City Administrator

FROM: Sean Grayson, Acting Public Works Director

Request City Council to Adopt **Resolution No. 7562** Approving a Construction Fee Credit and Reimbursement Agreement by and between the City of Rialto and Liberty Property Limited Partnership.

BACKGROUND

Liberty Property Limited Partnership, (“Developer”) submitted various planning and development applications to develop a warehouse consisting of a 401,000 square foot building on 16.9 acres of land on the south side of Valley Boulevard, between Spruce Avenue and Cactus Avenue (Assessor Parcel Number’s 0253-251-01,2,3,4, & 7) (the “Project”). The Project Location Map is attached as **Exhibit A** and the Project Site Plan is attached as **Exhibit B**.

On November 1, 2017, the Transportation Commission approved the Focused Traffic Impact Analysis for the Project and set related conditions of approval. On January 31, 2018, the Planning Commission approved Tentative Parcel Map 2017-0008, Conditional Development Permit 2017-0040, and Variance 2017-0011 after adoption of a Mitigated Negative Declaration (EAR 2017-0076). On December 19, 2018, the Development Review Committee (DRC) approved Precise Plan of Design No. 2017-0089 subject to Conditions of Approval (**Exhibit C**). The Conditions of Approval for the Project require Developer to construct specified off-site improvements:

- (i) Widen and reconstruct the south side of Valley Boulevard along the Project’s frontage from Cactus Avenue to Spruce Avenue (Conditions #51-58) (“Valley Improvements”); and,
- (ii) Install a traffic signal at the intersection of Valley Boulevard and Spruce Avenue (75% of this intersection is in the City of Rialto and 25% in unincorporated San Bernardino County) (Condition #96) (“Spruce Signal”); and,
- (iii) Modify and relocate a traffic signal at the intersection of Valley Boulevard and Cactus Avenue (Condition #96) (“Cactus Signal”); and
- (iv) Install a storm drain within the southerly half-width of Valley Boulevard to connect to the existing 42” storm drain in Cactus Avenue (Condition #88-89) (“Valley Storm Drain”).

Developer agreed to construct the Off-Site Improvements subject to a Construction Fee Credit and Reimbursement Agreement (**Exhibit D**). Section 3.33.100 of the Rialto Municipal Code (Fee Credits)

states that:

...if as a condition of approval of a development project a Developer constructs a public facility identified in a Nexus Report for which a development impact fee is imposed, then the Developer shall be eligible to receive a fee credit toward the development impact fee imposed on the development project for the same type of public facility so constructed. The Developer shall not be entitled to reimbursement for any excess in the costs to construct the public facility over the amount of the Developer's obligation to pay the development impact fee for the type of public facility constructed, unless a separate reimbursement agreement is approved by the City Council.

ANALYSIS/DISCUSSION

Fee Credits and/or Reimbursements

Section 3.33.110 of the Rialto Municipal Code (Construction and Credit Agreements) permits the City Administrator to negotiate a construction and credit agreement requested by a Developer, subject to City Council approval. The City Building Official or the City Engineer shall determine the amount of the fee credit based upon the evidence of costs to construct the fee credit eligible public facility submitted by the Developer.

The Regional Traffic Fee Program (Measure I, 2017 Update) identifies the widening of Valley Boulevard from three lanes to four lanes, commencing from Cactus Avenue to Spruce Avenue. It also identifies traffic signal improvements for the intersections of Valley and Spruce and Valley and Cactus. The Measure I, 2017 Update inventory of eligible projects is attached hereto as **Exhibit E**. The Measure I eligible projects are collectively defined as the "Valley Improvements" for the purposes of the Fee Credit and Reimbursement Agreement. The Regional Traffic Fee Program (RMC 3.33.160) compensates developers for constructing roadway capacity improvements, including roadway widening, curb/gutter/sidewalks, and streetlights (complete streets). It does not provide credit or reimbursement for parkway landscaping, utility relocation or utility undergrounding.

Prior to building permit issuance, the Project paid a total \$1,123,096.80 in Regional Traffic Development Impact Fees based upon the current fee schedule. The estimated construction cost for the eligible Valley Improvements is \$1,171,422.00. Because this estimated cost exceeds the Project's Regional Traffic Fee obligation, Developer requests a full fee credit, and reimbursement for the actual costs exceeding the Project's Regional Traffic Impact Fee. The City's reimbursement obligation from Regional Traffic Fees is therefore estimated at \$48,325.60. The Developer's cost estimate for the street improvements is attached hereto as **Exhibit F**. Since the Developer previously paid the Regional Traffic Fee, it requests an immediate reimbursement of \$1,123,096.80 (to reflect a fee credit outcome) with a future reimbursement of \$48,325.60 upon project completion and reconciliation to actual approved costs.

The intersection of Valley Boulevard and Spruce Avenue lies within the City of Rialto (75%) and the County of San Bernardino (25%). The City will seek a fair share reimbursement from the County, and to the extent received, reimburse the Developer for the cost of constructing this traffic signal. The reimbursement to the Developer shall not exceed 100% of the eligible costs. This obligation shall expire 5 years after project completion.

The Developer's cost estimate for the storm drain improvement is also included within **Exhibit F**. The storm drain fees paid by the Developer (\$801,366) exceed the estimated improvement costs of \$348,819. Since the Developer previously paid the Storm Drain Fee, it requests an immediate reimbursement of \$348,819 (to reflect a fee credit outcome) with a future reimbursement possible after project completion and reconciliation to actual approved costs.

The Construction Fee Credit and Reimbursement Agreement caps the soft costs at 15% of the Verified Construction Costs as defined. The soft costs include professional engineering and design services, Developer's management fee, testing and inspection fees and costs, administrative costs, permits, and plan check fees.

The table below summarizes the estimated public improvement costs, estimated fee credits, and potential reimbursements for the eligible improvements:

Estimated Fee Credits/Reimbursements

Project	Fund #	Fees Paid	Eligible Costs	Fee Credit Due	Estimated Reimbursement
Valley Boulevard Improvements	Fund 250	1,123,096.80	(1,171,422.00)	(1,123,096.80)	(48,325.20)
Valley Storm Drain	Fund 230	801,365.67	(348,819.00)	(348,819.00)	-

Normally, the Developer does not have a right to receive the reimbursements unless and until all of the following are met: (i) the Off-Site Improvements are completed and accepted by the City, (ii) the City has sufficient funds in the City’s Regional Traffic Fee or Storm Drainage Impact Fee Accounts as applicable to pay the Reimbursement, and (iii) the City Council appropriates said funds to pay the Reimbursement in accordance with the priority schedule for City Council approved projects. In this case, the Construction Fee Credit and Reimbursement Agreement provides a reimbursement of fees previously deposited (as if granting a credit). Any supplemental reimbursement in excess of the fees actually paid will remain subject to the satisfaction of (i), (ii), and (iii) above.

Construction administration will be provided by Wallace & Associates in accordance with the on-call engineering support procedures approved by the City Council on June 11, 2019. The scope of work expanded to encompass bid monitoring, construction administration, payroll compliance, and cost reconciliation as required by the procedures in the Construction Fee Credit and Reimbursement Agreement. Wallace & Associates provides the services based upon actual time and material reimbursement. The total cost of all off-site inspection services (including the DIF construction administration) is estimated at \$90,000, with 71% of this cost DIF eligible and the balance a project cost chargeable to the off-site inspection fees paid by Developer.

ENVIRONMENTAL IMPACT

On January 31, 2018, the Planning Commission adopted Resolution No. 18-09 approving a Mitigated Negative Declaration (EAR 2017-0076) for the Project. This environmental review analyzed the construction of the on-site private and off-site public improvements. No further environmental review is warranted.

Approval of the Construction Fee Credit and Reimbursement Agreement is an administrative or fiscal action by the legislative body that will not result in any additional a direct or indirect physical change in the environment than what was already analyzed (Section 15378(b) of the California Environmental Quality Act (CEQA) Guidelines).

GENERAL PLAN CONSISTENCY

The City of Rialto has identified several goals and objectives within the City’s recently adopted General Plan through which the City looks to improve the community. The proposed action to acquire right-of-way is consistent with the following goals and objectives contained in the General Plan:

- Goal 3-1: Strengthen and diversify the economic base and employment opportunities and maintain a positive business climate.
- Goal 3-6: Require that all developed areas within Rialto are adequately served with essential public services and infrastructure.

Goal 3-7: Upgrade public infrastructure as an inducement to promote private investment.

LEGAL REVIEW

The City Attorney prepared the Construction Fee Credit and Reimbursement Agreement, reviewed, and supports this staff report and Resolution.

FINANCIAL IMPACT

Operating Budget Impact

There are no immediate impacts to operating budget. The additional roadway improvements will increase street maintenance expenditures in the future.

Capital Budget Impact

The Developer paid the required Regional Traffic and Storm Drain fees at building permit issuance, and requests immediate reimbursement for the estimated costs (to reflect a credit). Upon completion, staff will verify the final costs and the City/Developer will make reconciliation payments as appropriate in accordance with the terms of the Construction Fee Credit and Reimbursement Agreement.

Developer already pulled its building permit for the Project and it is well under construction. The City did not previously budget the reimbursement payments to Developer in the FY19/20 Budget. If approved, the Finance Department will submit a subsequent budget resolution.

The City intends to pay the reimbursement amounts immediately upon completion of the Off-Site Improvements, the acceptance as complete by the City Council, and the availability of Regional Traffic Fee Funds. This is likely to occur during FY20.

The Developer will pay off-site inspection fees that will pay for the cost of construction administration and inspection of those improvements, subject to reimbursement of a portion of the cost from development impact fees.

Licensing

Contractors performing the off-site street improvements are required to obtain a business license.

RECOMMENDATION

Staff recommends that the City Council Adopt a Resolution (**Exhibit G**) Approving a Construction Fee Credit and Reimbursement Agreement by and between the City of Rialto and Liberty Property Limited Partnership.