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1CITY RECORDER USE ONLY:

AGENDA ITEM #: 13.
 MEETING DATE: 08/10/2020
 FINAL ACTION: RESO 2020-85

City Manager removed this item from the Council Agenda 08/10/2020
 Request by Applicant to Continue Matter to 09/14/2020 Meeting

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

PROJECT TEAM: *Greg Robertson, Director of Public Works
 Derek Robbins, Project Engineer*

MEETING DATE: *August 10, 2020*

SUBJECT TITLE: *Wauna Credit Union Proposed Public Improvement Reimbursement District*

ACTION REQUESTED:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Ordinance	Order	X	Resolution	Motion	Informational

X all that apply

BACKGROUND:

On January 11, 2011, City Council Adopted Ordinance No. 2011-02, which allows the City to create a process for development of reimbursement districts as a means to finance public improvements.

The City can form a reimbursement district when one party constructs and pays for infrastructure (sewer, water, storm, and street) that has the potential to benefit another party. If during the life of the reimbursement district (typically 10 years), the benefitted property owner makes use of the improvements, then the reimbursement is due. The benefitted property owner makes use of an improvement by developing adjacent to a street improvement or connecting to pipelines included in the reimbursement district.

The process includes preparation of a report by the City Engineer that outlines the improvement costs, the method of distributing the costs, the properties involved and includes details of the reimbursement agreement. The Engineer's Report is presented to the City Council at a public hearing and owners of property in the district are given the opportunity to provide input. Once approved by the City Council, a resolution is recorded against properties in the district. Reimbursements are collected by the City and turned over to the developer when properties in the district develop or make use of the improvements. See City Code Section 151.110 pertaining to reimbursement districts.

The Wauna Credit Union (WCU) was constructed and included necessary new public sewer (255 feet) and storm (900 feet) service extensions to the site through a public improvement agreement

with the City. A majority of this public sewer and storm constructed by WCU will benefit other undeveloped properties as shown below. Therefore WCU submitted application for reimbursement district to potentially recoup some of their improvement costs from others taking benefit. A majority of the surround vacant lots shown below have been included in a recent development application accepted by to the City. Furthermore, that development has already been conditioned to participate in the reimbursement district once it has been formed.

ISSUE STATEMENT:

Wauna Credit Union has constructed public improvements and would like an opportunity to recover some of their costs pursuant City Ordinance No. 2011-02 and City Code Sections 151.110 to 151.124. Following are the necessary steps for creating this reimbursement district.

1. City Council Meeting, Resolution (August 10, 2020)
 - a. Accept Engineers Draft Report on formation of proposed reimbursement district.
 - b. Direct City Recorder to set a Public Hearing for September 14, 2020, at 7:00 p.m. or shortly thereafter, to consider public testimony, all letters of remonstrance and take final action, if permitted and deemed prudent, to form this proposed district.
 - c. Further direct City Recorder to serve notice to each property owner of record within the proposed district of this action, their right of remonstrance and general character of the proposed District. Notice shall be given not less than ten nor more than 30 days prior to the public hearing date by certified mail, return receipt requested, or by personal service.
2. City Council Meeting, Resolution (September 14, 2020)
 - a. Public hearing on proposed reimbursement district to review the engineers report and give those impacted a chance to review/comment. At the conclusion of the hearing, the City Council shall approve, reject, or modify the recommendations contained in the City Engineer's report.
 - b. If the Council approves the City Engineer's Report, the City Council has the sole discretion, after the public hearing, to decide whether the District is to be formed or not. If a District is to be formed, a resolution authorizing the formation of the Reimbursement District shall be adopted.



The Engineer's Draft Report reflecting the actual construction costs of the project and the reimbursement fee for participating properties is attached.

FISCAL IMPACT:

The City collects a \$1,420 fee to administer the district on behalf of the owner, WCU.

STAFF RECOMMENDATION:

Staff recommends acceptance of the Engineer's Draft Report. Staff also recommends directing City Recorder to set a public hearing date and notifying each property owner in the district.

ATTACHMENT(s):

Attachment 1 – Engineer's Draft Report.

Attachment 2 – Resolution accepting the Engineer's Draft Report and directing City Recorder to set a public hearing date with notification to each property owner in the district.

August 10, 2020

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VIA E-MAIL

Mr. Peter Truax, Mayor
Forest Grove City Council
Forest Grove City Hall
1924 Council Street
PO Box 326
Forest Grove, OR 97116-0326

RE: My Client, J.T. Smith Companies; Comments on Proposed Acceptance of City Engineer's Report for Formation of Proposed Reimbursement District Initiated by Wauna Credit Union

Dear Mayor Truax and Members of the Forest Grove City Council:

This office represents the J.T. Smith Companies ("Smith"). Smith is developing the former Albertson's property, consisting of ten tax lots, adjacent to and near Wauna Credit Union ("Wauna"). Wauna's proposed Reimbursement District (the "RID") includes all of Smith's property and will add significant and unanticipated costs to Smith's development of its apartment project. Smith asks the City Council to consider this letter as it reviews the Engineer's Report for the RID. Before providing substantive comments on the RID's compliance with the requirements of Forest Grove Code ("FGC") 151.110 to 151.124, Smith has three preliminary comments.

First, Smith is pleased that it will become part of Forest Grove when it builds its new apartment project. Smith has no desire not to be a good neighbor with Wauna, or not to participate in a RID that is proportionate to the benefits to Smith's development. However, because the Engineer's Report was not available to Smith until recently, it is only now able to review the financial impacts on its project from the RID.

Second, Smith asks that the City Council open and take testimony at the August 10 City Council meeting but continue the matter until September 14, 2020 and that it also continue the City Council hearing on adoption of the RID Resolution now scheduled for September 14 to the next City Council meeting available date. A continuance will not prejudice Wauna. This request is made in order to give Smith and its engineer an opportunity to discuss the RID with the City Engineer and with Wauna. Despite Wauna being Smith's neighbor and being aware of Smith's development, Wauna has not talked to Smith about the RID. It is appropriate to allow Wauna and the most-affected property owner, Smith, discuss the proposed charges against Smith's property and to allow Smith to discuss the RID with the City Engineer.

Third, the Forest Grove Planning Commission approved Smith's limited land use application. Exhibit E to the Staff Report for that decision is the "Engineering Department Special Conditions." Special Condition 14 provides in its entirety that "Applicant shall participate in the Poplar Street stormwater drainage system reimbursement district." To the extent someone may suggest that Smith cannot comment on the Engineer's Report or challenge the adoption of the Resolution establishing the RID, Smith thinks it is appropriate to discuss this issue now.

The condition does not prohibit Smith from commenting on the Engineer's Report or challenging the Resolution; the condition says only that Smith must participate in the stormwater RID. Smith will participate in a RID that is eventually adopted, subject to any review by the courts. Second, the condition refers only to a stormwater RID but Wauna has proposed a stormwater and a sanitary sewer RID. At most, the condition concerns only the stormwater portion of the RID. Finally, the condition cannot prevent Smith from participating in the review of the Engineer's Report or the Resolution allowed under the FGC. For these reasons, Smith is providing comments on the Engineer's Report and will participate in the City Council hearing on the Resolution creating the RID as allowed by the FGC.

1. Comments on the Engineer's Report and Compliance with the FGC.

The Engineer's Report at page 171 notes that the RID can be approved when one party constructs public improvements that benefit another party. FGC 151.110, "Purpose." FGC 151.113.D, "City Engineer's Report," requires that the City Engineer consider a methodology for allocating the cost of the public improvements among the properties in the RID and consider rate-making principles associated with the financing of public improvements and other relevant factors. As explained below, the RID fails to satisfy these requirements because Wauna seeks to recoup improvement costs that would be unnecessary for Smith if it were to construct its own improvements. Because these required considerations should result in a RID that fairly and proportionately allocates costs to other properties but have not been considered, the RID is unfair and not proportionate to the benefits derived by Smith from Wauna's construction of the public improvements. Wauna should be responsible for all of its costs not related to the proportionate benefit to Smith.

The RID includes and allocates costs to 13 lots. One of these lots is Wauna's but 10 of the lots in the RID are Smith's lots. Wauna clearly seeks to take advantage of its neighbor's apartment project to subsidize its own development costs, contrary to the FGC, as explained below.

Additionally, the disparity of benefit does not end with the number of lots in the RID. The RID proposes to split the sewer line costs of \$108,340 equally with Smith, resulting in an allocation of \$57,170.00 to Smith. The RID proposes that Smith be allocated 82.52% of the storm sewer improvements costs as compared to Wauna's 11.5% of the costs, despite Smith benefitting from and needing far less than this percentage for its development. This results in Wauna paying only \$29,299.74 compared to Smith paying \$210,963.32. In other words, even though Smith needs just a small part of the public improvements to be constructed by Wauna, Wauna proposes that Smith pay over \$250,000 as opposed to Wauna's payment of about \$86,000. The City Council

should ask if Wauna would have constructed this project but for its intention to compel Smith to pay for most of its costs. The RID does not meet the definition of “utilize” in FGC 151.111 because Smith will not benefit from and does not need to use the full extent of Wauna’s public improvements.

A. Does the RID Benefit Smith’s Property?

The Engineer’s report assigns proportionate shares of responsibility based on contributing area to the entire run of the utility lines. However, all of Smith’s properties have a common ownership, are in the process of a lot-consolidation process and have submitted and obtained approval of a limited land use application showing a proposed stormwater piping system that utilizes connections to the existing stormwater system at two different locations. The City Council vacated 19th Place because all of Smith’s lots will be developed together and utilities routed internally, as has been planned since Albertson’s purchased the properties over a decade ago. As explained below, Wauna’s improvements do not benefit Smith except for a small part of the two new lines, in one case just over 10%, and in another case, about a third but Wauna asks Smith to pay over 80% of the costs in one case and 50% of the costs in the other. The RID does not benefit Smith to the extent requested by Wauna.

a. Stormwater Improvement Allocation of Costs Proposed by Wauna.

The stormwater connection for Smith Tax Lots 1910, 1916, 1924, 1934, 1942, 1907 and 1913 only utilizes 95 linear feet of the overall 900 linear feet (11%) constructed by Wauna. These Tax Lots should only be subject to a proportionate share of no more than 11% of the overall cost of the project, because that is the amount of pipe that would be required to be installed to develop those lots. In other words, if those lots were being developed before Wauna, they would only have been required to construct 95 feet of this pipe.

The stormwater connection for Tax Lots 1925, 1931 and 3510 only utilizes 295 linear feet of the 900 feet total that was installed by Wauna. These Tax Lots should only be subject to a proportionate share of no more than 32% of the improvement costs.

b. Sewer Improvements Allocation of Improvement Costs Proposed by Wauna.

Smith does not need to connect at all to Wauna’s sewer line. Because Smith does not benefit from this line, the RID should not impose these costs on Smith.

B. The RID Methodology is Flawed and Unexplained.

The RID map at Page 177 targets Smith and two other properties but excludes other tax lots with no explanation of why that is rationale or fair as required by FGC 151.113.B and D. Further, the

50%/50% split of the sewer line costs excludes the two other lots without evidence that other lots will not benefit.

C. The Engineer's Report Does Not Examine the Costs of the Public Improvements Submitted by Wauna.

FGC 151.112.C and 151.113.D require that Wauna submit evidence as to the actual costs of the public improvements shown through receipts, invoices and similar documents and that the City Engineer analyze the costs. The Engineer's report at Page 176 states the purported actual costs but includes no evidence or analysis as to the costs' accuracy. Did Wauna spend the money it seeks to be reimbursed for? Were the costs reasonable? How do these costs compare to other recent similar projects? This evidence and analysis is needed before the City Council can approve the Engineer's Report.

D. Costs Recouped by Wauna in Other Ways Must be Deducted from the Costs that Wauna Seeks to Obtain Through the RID.

The Engineer's Report at Page 171 notes that Wauna and the City have entered into a Public Improvement Agreement (the "Agreement") for the construction of the two new public improvements. The Agreement is not in the record nor otherwise analyzed in the Engineer's Report. If the Agreement provides for City payments to Wauna, including System Development Charge ("SDC") credits, the City Council must deduct those costs from the costs sought from Smith by Wauna.

E. The RID is Not Proportional to the Benefits Derived by Smith.

The City Council's decision on the Engineer's Report and the RID Resolution is subject to the analysis under *Hill v. City of Portland*, ___ Or App ___ (2018), *Nollan v. California Coastal Comm'n*, 483 US 825 (1987) and *Dolan v. City of Tigard*, 512 US 374 (1994) holding that City actions must be "roughly proportional" to the impacts of a proposal. In this case, the City Council must apply these decisions by finding that what Wauna seeks and what the City Council may impose is disproportionate to the benefits that Smith would receive from the RID.

2. Conclusion.

The City Council should not accept the Engineer's Report until these issues have been resolved. A delay of the action on the Engineer's Report will allow Smith to work with the City Engineer to answer these questions and with Wauna to arrive at a fair and proportional RID that Smith can agree to.

Mr. Peter Truax, Mayor
August 10, 2020
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Thank you for your consideration of this letter.

Very truly yours,

A handwritten signature in blue ink that reads "Michael C. Robinson". The signature is written in a cursive, flowing style.

Michael C. Robinson

MCR/jmhi

cc: Mr. Jesse Vanderzanden (*via email*)
Mr. Derek Robbins (*via email*)
Mr. Jesse Nemecek (*via email*)
Mr. Aaron Murphy (*via email*)
Mr. Chad Jacobs (*via email*)

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City Manager removed this item from the Council Agenda 08/10/2020
Request by Applicant to Continue Matter to 09/14/2020 Meeting

RESOLUTION NO. 2020-85

RESOLUTION ACCEPTING CITY ENGINEER'S DRAFT REPORT ON FORMATION OF A PROPOSED REIMBURSEMENT DISTRICT, PURSUANT TO CITY CODE SECTIONS 151.110 THROUGH 151.124, "WAUNA CREDIT UNION PUBLIC IMPROVEMENT REIMBURSEMENT DISTRICT"

WHEREAS, the City Engineer, consistent with the requirements of Forest Grove City Code Sections 151.110 TO 151.124 (FGMC), prepared a written report addressing formation of proposed improvement reimbursement district; and

WHEREAS, the Council, reviewed the Engineer's Draft Report on August 10, 2020, and heard from the City Engineer thereon.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. That the City Council hereby accepts the City Engineer's Draft Report on the formation of a proposed improvement reimbursement district as written in Attachment 1 (Draft City Engineer's Report).

Section 2. That the City Engineer may amend this Draft Report prior to finalization and will present any amendments at the September 14, 2020, Council meeting.

Section 3. The City Recorder is directed to set a Public Hearing for September 14, 2020, at 7:00 p.m. or shortly thereafter, to consider public testimony, all letters of remonstrance and take final action, if permitted and deemed prudent, to form this proposed district.

Section 4. The City Recorder is further directed to serve notice to each property owner of record within the proposed district of this action pursuant to City Code section 151.115, their right of remonstrance and general character of the proposed District.

Section 5. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 10th day of August, 2020.

Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 10 day of August, 2020.

Peter B. Truax, Mayor

Attachment 1

**ENGINEERS DRAFT REPORT
WAUNA CREDIT UNION
PROPOSED PUBLIC IMPROVEMENT REIMBURSEMENT DISTRICT
By: Derek J. Robbins, P.E.
City of Forest Grove Civil Engineer
August 10, 2020**

The Forest Grove Wauna Credit Union at 3532 Pacific Avenue (WCU), has made application to enter into an agreement with the City for the establishment of a Reimbursement District associated with necessary new public sewer and storm service extensions to the site (improvements). Upon future development or redevelopment of adjacent properties, the Applicant desires to recoup a portion of the improvement costs. Pursuant to Ordinance No. 2011-02 and City Code Sections 151.110 to 151.124, the objective of this report is to make a recommendation to Council as to the merit of establishing this Reimbursement District.

Engineering has evaluated an application from WCU and has determined that the improvements proposed by OAR will likely benefit adjacent properties when they develop. Therefore, the Applicant (WCU) may be entitled to recoup a portion of the improvement costs. City Code 151.110 to 151.124 requires the following specific information:

1. Whether the Public Improvement for which reimbursement is sought has capacity sufficient to allow use thereof by property other than property owned by the applicant;

The Applicant has constructed improvements to serve property other than that owned by the Applicant (see Section 4).

2. The area proposed to be included in the reimbursement district;

The Reimbursement District includes properties south of WCU on either side of Poplar Street (see Item 4). Owner names and tax lot details are on file and based on latest Washington County Assessor information (See Section 4).

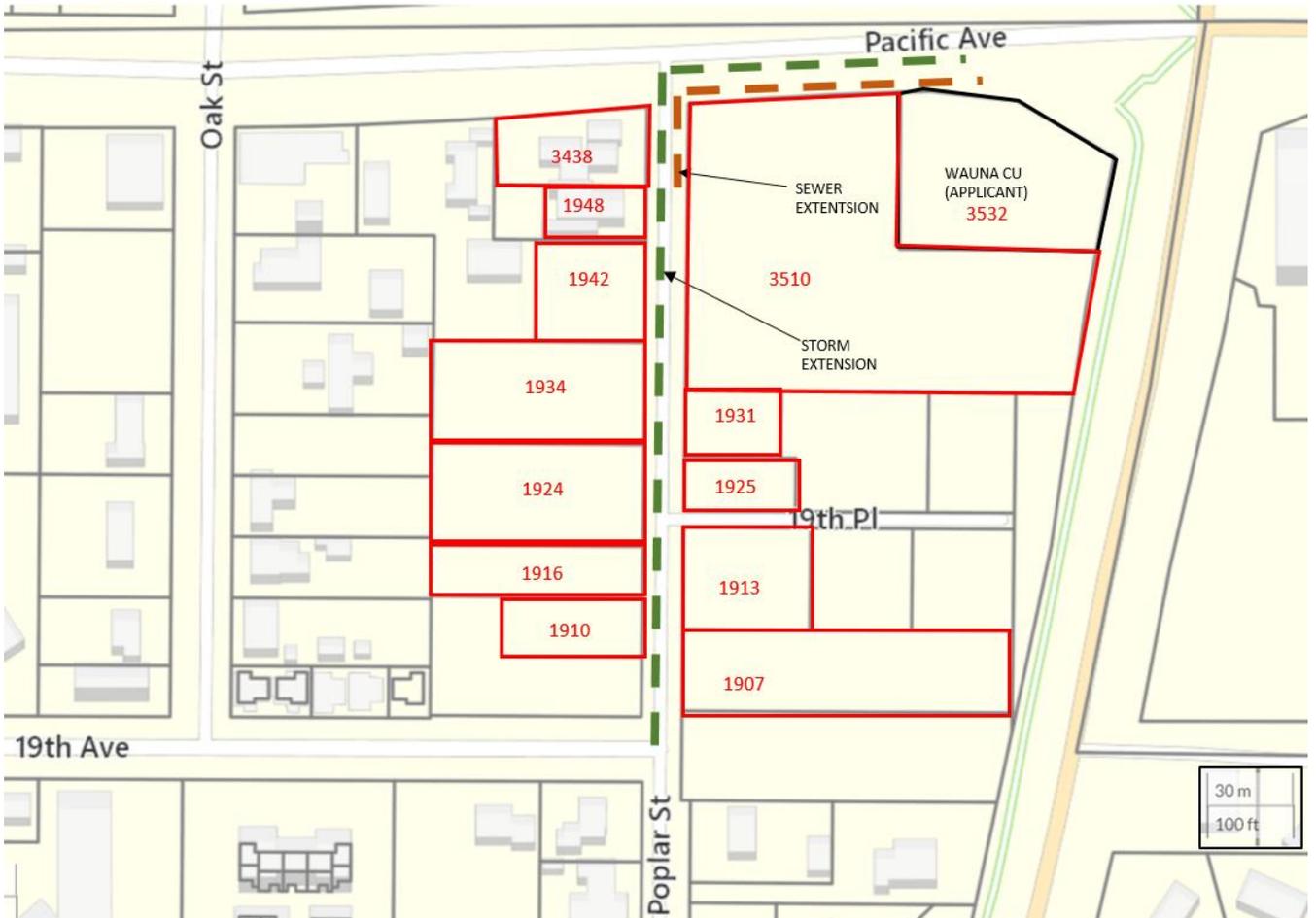
3. The actual cost of the improvements within the area of the proposed Reimbursement District and the portion thereof for which the applicant should be reimbursed;

Table 1: Actual Project Cost (submitted by WCU)

	Description	Amount
	Storm (900 Feet)	
	Design	\$2,670
	Construction	\$260,196
	Sub Total	\$262,866
	Sewer (250 Feet. Required hydrant replacement and relocation of existing water & gas main)	
	Design	\$1,050
	Construction	\$107,290
	Sub Total	\$108,340
	TOTAL	\$371,206

4. A methodology for allocating the cost among the parcels within the proposed district and, where appropriate, defining a "unit" for applying the Reimbursement Fee to property which may be partitioned, subdivided or otherwise modified at some future date;

Improvements have the potential to benefit 12 other tax lots and costs for extension were allocated to the tax lots based on what is shown below.



Poplar Street Storm Pipe Extension Reimbursement District

Property Owner	Address	Tax Lot #	Area (sf)	Split (%)	Cost
Wauna Federal Credit Union (Applicant)	3532 Pacific Ave	1S305BA00100	28000.20	11.15%	\$29,299.74
Albertson's Stores Sub LLC	3510 Pacific Ave	1S305BA00200	85644.38	34.09%	\$89,619.29
Albertson's Stores Sub LLC	1931 Poplar St	1S305BA03600	6250.76	2.49%	\$6,540.87
Albertson's Stores Sub LLC	1925 Poplar St	1S305BA03700	5774.98	2.30%	\$6,043.01
Albertson's Stores Sub LLC	1913 Poplar St	1S305BA03100	12524.95	4.99%	\$13,106.25
Albertson's Stores Sub LLC	1907 Poplar St	1S305BA03001	25999.83	10.35%	\$27,206.53
Pacific Development Holdings LLC	3438 Pacific Ave	1S305BA00300	10800.91	4.30%	\$11,302.20
GONZALEZ, GUADALUPE CANTU & OROPEZA, ISABEL CANTU	1948 Poplar St	1S305BA00401	5260	2.09%	\$5,504.13
Albertson's Stores Sub LLC	1942 Poplar St	1S305BA01900	10809.09	4.30%	\$11,310.76
Albertson's Stores Sub LLC	1934 Poplar St	1S305BA02000	20855.93	8.30%	\$21,823.89
Albertson's Stores Sub LLC	1924 Poplar St	1S305BA02100	20814.88	8.29%	\$21,780.94
Albertson's Stores Sub LLC	1916 Poplar St	1S305BA02200	10406.45	4.14%	\$10,889.43
Albertson's Stores Sub LLC	1910 Poplar St	1S305BA02300	8064.68	3.21%	\$8,438.98
TOTAL			251207.04	100%	\$262,866.00

**Poplar Street Sewer Pipe Extension
Reimbursement District**

Property Owner	Address	Tax Lot #	Split (%)	Cost
Wauna Federal Credit Union (Applicant)	3532 Pacific Ave	1S305BA00100	50%	\$54,170
Albertson's Stores Sub LLC	3510 Pacific Ave	1S305BA00200	50%	\$54,170
TOTAL			100%	\$108,340.00

The costs for the improvements were allocated to the properties, based on the splits shown in the table. For storm water a percent split was calculated for each property based on the parcels area relative to the total cost. For the sewer only two parcels will be benefiting from the improvement and therefore cost was divided equally between both.

5. The amount to be charged by the City for administering the project,

1	Reimbursement District Application Review Fee (City Engineer: \$143/Hr)	\$1,000.00
	(Engineering Technician: \$35/Hr)	
2	Reimbursement District Agreement Administrative Fee: \$35/property	\$420.00
	Total	<u>\$1,420.00</u>

All fees shall be paid prior to entering into a reimbursement district agreement with the applicant.

6. The period of time that the right to reimbursement exists;

Pursuant to City Code, the right to reimbursement exists for ten years from the district formation date. Upon application for an extension, the City Council at its sole discretion and may authorize up to 10 more years for total reimbursement period not to exceed twenty years.

7. Whether the improvements will meet or have met City standards.

The constructed improvements have been reviewed, inspected, and accepted by the City in accordance with City standards.