

**ITEM 10.F.**

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** David A. Bobardt, Community Development Director  
Prepared by Joseph Fiss, Principal Planner

**DATE:** October 25, 2010 (CC Meeting of 11/17/2010)

**SUBJECT:** Consider Release of Surety (Letter of Credit) for A-B Properties (TM 5147)



**BACKGROUND**

On December 16, 1998, the City Council adopted Ordinance No. 250 (effective January 15, 1999), approving a Development Agreement between the City of Moorpark and A-B Properties in connection with General Plan Amendment (GPA) No. 97-02 and Zone Change (ZC) No. 97-06 and on March 15, 2000, the City Council adopted Resolution No. 2000-1714, approving Tentative Tract Map 5147 for seventeen (17) lot industrial subdivision of 34.5 acres, located north of the Union Pacific Railroad tracks and about one-quarter (1/4) of a mile west of Gabbert Road.

**DISCUSSION**

Condition of Approval No. CED-33 of Resolution No. 2000-1714 and Section 6.21 of Development Agreement 1998-04 (Ordinance No. 250) require that Developer construct an off-site 32-foot wide paved access road, encumbered by a right-of-way easement recorded January 4, 1968 in favor of Southern California Edison ("SCE"), to serve as primary access, emergency access and for utility purposes, until the Improvements as defined in Section 6.22 of the Development Agreement are constructed, or until other alternative access is provided via construction of a 2-lane portion of North Hills Parkway from the Property to Gabbert Road following Moorpark's approval of an amendment to said Development Agreement. Following completion of the Improvements or the other alternative access, this access road to Gabbert Road would revert to emergency access purposes only.

SCE allowed use of the Existing Access Easement for grading access, but did not permit use for public access to the affected property. This prohibition made it impossible for the developer to comply with the required conditions of approval.

On January 23, 2008, the developer requested in writing that Moorpark initiate eminent domain proceedings to acquire all property necessary from SCE to construct the Paved Access Road Interests pursuant to Section 7.4 of the A-B Development Agreement.

On May 6, 2008 the City entered into a reimbursement agreement for the City's costs, including legal fees, related to the process of acquisition, guaranteed by a Letter of Credit in the amount of \$200,000.00.

SCE and A-B Properties have negotiated a settlement allowing public use of the access road and the City Attorney has indicated that legal costs related to this action will no longer be accrued.

A-B Properties has accrued \$192,184.55 in direct City Attorney costs that have been billed to the City as of September 15, 2010. Resolution No. 2010-2896 requires that all contract services shall be billed at cost, plus fifteen percent. In this case, the total billed costs are \$221,012.23 because substantial additional time was needed to reach a settlement. The direct legal fees for the acquisition were initially expected to not exceed \$100,000.00, which would mean that the City would have billed A-B Properties no more than \$115,000.00. In order to offset the additional \$92,184.55 of unexpected legal fees, staff recommends that the City Council direct staff to collect the fifteen percent administrative fee only for the first \$100,000.00 (\$15,000.00) and bill A-B Properties the \$92,184.55 of direct legal fees with no additional administrative fee, for a total of \$207,184.55, a savings to the applicant of \$13,827.68. Staff is satisfied that \$15,000.00 fully covered the costs of administering this agreement due to the economies of scale of the size of the contract. Additionally, staff costs, including those of the Deputy City Manager, Community Development Director and Public Works Director, have been charged and billed directly to the developer's condition compliance deposit, consistent with the City's policy for reimbursement of all direct costs related to development projects.

The following is the applicable surety:

<u>SURETY TYPE</u>	<u>NUMBER</u>	<u>ORIGINAL SURETY AMOUNT</u>	<u>PRIOR AUTHORIZED ACTION</u>	<u>AUTHORIZED ACTION OF 11/17/2010</u>
Irrevocable Standby Letter of Credit	080501.OD.4939	\$200,000.00	NONE	Release Letter of Credit

**FISCAL IMPACT**

None.

**STAFF RECOMMENDATION**

Authorize the City Clerk to release the Letter of Credit surety referenced in the agenda report for A-B Properties and to bill no more than \$15,000.00 of administrative cost related to the reimbursement agreement.

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