

REQUEST FOR COUNCIL ACTION

SUBJECT: REIMBURSEMENT AGREEMENT FOR THE JORDAN VALLEY TOD SUBDIVISION

SUMMARY: Consider a reimbursement agreement and approval of expenditure for sanitary sewer improvements installed with the Jordan Valley TOD Subdivision.

FISCAL:
IMPACT: Total estimated payment of \$600,988 consisting of: \$377,708.24 from impact fees and \$223,279.50 from user fees to be reimbursed by impact fees at a later time.

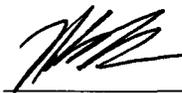
STAFF RECOMMENDATION:

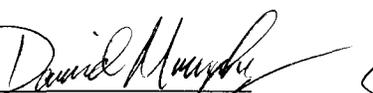
Staff recommends that the City Council approve and authorized the Mayor to sign the proposed Reimbursement Agreement and approve expenditure of up to \$377,708.24 from sewer impact fees and up to \$223,279.50 from sewer user fees to be reimbursed by impact fees at a later time.

MOTIONS RECOMMENDED:

Motion #1 (Expenditure): I move to approve expenditure of up to \$377,708.24 from sewer impact fees and \$233,279.50 from sewer user fees to be reimbursed by sewer impact fees at a later time.

Motion #2 (Reimbursement Agreement; if Motion #1 passes): I move to adopt Resolution 15-60 authorizing the Mayor to execute the Reimbursement Agreement with Jordan Valley Station I, LLC.

Prepared by:

Nate Nelson
City Engineer

Reviewed by:

David Murphy, P.E.
Engineering Manager for CIP

Reviewed by:

Wendell Rigby P.E.
Public Works Director

Reviewed as to legal form:

Darien Alcorn
Deputy City Attorney

Recommended by:

Bryce Haderlie
Interim City Manager

BACKGROUND DISCUSSION:

The Developer, intends to develop the Jordan Valley TOD subdivision located adjacent to the Jordan Valley Trax light rail station. As a condition of development approval, Developer is required to construct and install public improvements and extensions, one of which is a sanitary sewer line, to serve the subdivision. In a Development Agreement dated September 23, 2010, the Developer, City and UTA agreed that the Developer could be reimbursed for 34% of the cost of the sewer improvements and that Developer would apply for a reimbursement agreement at some future time.

As anticipated, pursuant to West Jordan City Code, Title 8, Chapter 3, Article B, the Developer applied for a reimbursement agreement authorizing Developer to receive impact fee reimbursement for 34% of the cost of the sewer improvements. The total estimated cost is \$1,767,611.00 (see Exhibit B of the proposed Reimbursement Agreement). The estimated 34% reimbursement is \$600,988.00.

City staff and Developer have discussed terms and conditions, and a proposed Reimbursement Agreement is presented with this Request for Council Action. The Developer, at its own expense, will construct and install the sewer improvements upon property that Developer has already acquired.

The proposed reimbursement is due to Developer sixty (60) days after all of the following are completed:

1. The sewer improvements are complete and have been inspected and approved by the City and all necessary property interests have been transferred to the City.
2. Developer has submitted the documentation required by the Reimbursement Agreement evidencing actual costs.
3. Sewer impact fees of at least \$377,708.24 have been paid in full.
4. The West Jordan City Council has approved expenditure of at least \$223,279.50 of user fees to be reimbursed by impact fees at a later date.

The maximum reimbursement will be based on the estimated cost shown in Exhibit B of the attached Reimbursement Agreement or the actual costs, whichever is less. If actual costs exceed the estimated costs, the Developer will need to request an amendment to the Reimbursement Agreement, which will be presented to City Council for consideration.

At the time of preparation of this Request for Council Action, the Developer expects to pay sanitary sewer impact fees of \$377,708.24 before the City Council's March 25th meeting. Construction of the sanitary sewer improvements is expected to commence soon and be complete before the end of the 2015/2016 fiscal year.

Typically, reimbursement agreements are written so reimbursement is due and payable after sufficient citywide impact fees are collected and higher priority projects have been fully funded. The portion of the City's sanitary sewer system proposed with this development is a high priority (currently third on the priority list) and is within the City's impact fee facilities plan. However, it could not reach the highest priority unless the sewer treatment plant bond payment was fully funded.

Therefore, it was determined by City staff and management to recommend repayment of \$377,708.24 of the reimbursement from the Developer's own sewer impact fees and to recommend repayment of \$223,279.50 from sewer user fees. It is anticipated that the amount paid from sewer user fees will be reimbursed by impact fees collected in the future.

The proposed Reimbursement Agreement anticipates reimbursement from these sources in these amounts. If City Council does not approve the funding, then the Reimbursement Agreement cannot be approved.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 15-64

**A RESOLUTION AUTHORIZING THE EXECUTION
BY THE MAYOR TO A REIMBURSEMENT AGREEMENT
BETWEEN THE CITY OF WEST JORDAN
AND JORDAN VALLEY STATION 1. LLC**

WHEREAS, the City Council of the City of West Jordan desired to enter into a Reimbursement Agreement with Jordan Valley Station 1, LLC, for public improvements constructed for the Jordan Valley TOD Subdivision located adjacent to the Jordan Valley Trax light rail station; and

WHEREAS, the Mayor is authorized to execute this agreement pursuant to Utah Code Annotated 10-3-1223, after the City Attorney approval as to legal form,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is hereby authorized and directed to execute the Reimbursement Agreement with Jordan Valley Station 1, LLC, entitled as follows:

“Reimbursement Agreement for Jordan Valley TOD”

Section 2. This Resolution shall take effect immediately upon passage.

Adopted by the City Council of West Jordan, Utah, this 25th day of March 2015

KIM V. ROLFE
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council	"AYE"	"NAY"
Council Member Jeff Haaga	_____	_____
Council Member Judy Hansen	_____	_____
Council Member Chris McConnehey	_____	_____
Council Member Chad Nichols	_____	_____
Council Member Ben Southworth	_____	_____
Mayor Kim V. Rolfe	_____	_____

REIMBURSEMENT AGREEMENT
Jordan Valley TOD

This Reimbursement Agreement is entered into this _____ day of _____, 2015, by and between Jordan Valley Station I, LLC, a Delaware limited liability company (“Developer”), and the City of West Jordan, a municipality and political subdivision of the State of Utah (the “City”).

RECITALS

WHEREAS, Developer desires to develop certain property located within the corporate boundaries of the City of West Jordan, Salt Lake County, Utah, as reflected in Exhibit “A” which is attached hereto and by this reference made a part hereof (the “Property”); and

WHEREAS, as a condition of development approval, Developer is required to construct and install public improvements and extensions, some of which are more particularly described in Exhibit “B” which is attached hereto and by this reference made a part hereof (collectively, the “Eligible Public Improvements”); and

WHEREAS, The Parties agree that the Eligible Public Improvements are: lawfully required as a condition of development approval; reasonably anticipated to serve future development; located off-site or will create additional or excess capacity beyond the proportionate share attributable to Developer to reasonably service the proposed development at the City’s adopted level of service standards; and

WHEREAS, pursuant to West Jordan City Code, Title 8, Chapter 3, Article B, the Developer has applied for a reimbursement agreement authorizing Developer to receive impact fee reimbursement from the City for the Eligible Public Improvements; and

WHEREAS, City and Developer desire to identify the Eligible Public Improvements and to clarify the reimbursement for the Eligible Public Improvements that may be made available through impact fees generated by the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Reimbursement Agreement and are made a part hereof.
2. Developer’s Obligations.
 - a. Developer, at its own expense, shall construct and install or cause to be constructed and installed the Eligible Public Improvements identified in the attached Exhibit “B”.

b. Developer has, at its own expense, acquired the necessary property interests for the construction and installation of the Eligible Public Improvements and to dedicate the acquired property interests and Eligible Public Improvements to the City.

3. Reimbursement Payments.

a. Impact fee reimbursement for the Eligible Public Improvements shall be paid in accordance with the provisions and conditions of this Reimbursement Agreement.

b. Reimbursement shall be due to Developer in the amount shown in Exhibit B, sixty (60) days after all of the following are completed:

i) The applicable Eligible Public Improvements have been fully installed, inspected, and approved by the City (which approval shall not be unreasonably withheld, conditioned, or delayed), and the real property and the applicable Eligible Public Improvements have been dedicated to the City by lawful conveyance through plat or warranty deed or other method acceptable to the West Jordan City Attorney;

ii) Developer has submitted the documentation required by this Reimbursement Agreement evidencing actual costs of the applicable Eligible Public Improvements; and

iii) Sewer impact fees of at least \$377,708.24 have been paid in full; and

iv) The West Jordan City Council has approved expenditure of at least \$223,279.50 of user fees to be reimbursed by impact fees at a later date.

c. It is currently anticipated that the reimbursement of the Eligible Public Improvements will be up to \$600,988.00. However, this Agreement shall not be construed in any manner to bind the legislative or administrative discretion of the City or its future budget appropriations.

4. Reimbursement Amount.

a. Maximum Reimbursement.

i) The maximum reimbursement for the Eligible Public Improvements shall be thirty-four percent (34%) of the lesser of the estimated or verified actual cost of the Eligible Public Improvements as shown in Exhibit "B".

ii) The estimated costs for Eligible Public Improvements, as shown on Exhibit "B", are estimates only. If verified actual costs are less, the maximum reimbursement shall be based on the verified actual costs. If verified actual costs exceed the estimated costs, the maximum reimbursement shall be based on the estimated costs shown in Exhibit "B", except as approved by written amendment to this Reimbursement Agreement entered into in accordance with the amendment provisions set forth herein.

iii) Developer shall provide to the City documentation, acceptable to the City Attorney, demonstrating the actual costs incurred by the Developer for the acquisition, construction and installation of Eligible Public Improvements. Documentation shall include but not be limited to: receipts, checks, vouchers, bills, statements, and all other information reasonably necessary for the City to determine the actual costs incurred. Developer's failure to submit the required documentation may result in the temporary rejection of the undocumented claimed amount until such time as the required documentation is provided.

b. Interest. No interest shall be included in the amount of the reimbursement, and no interest shall be paid to developer by the City or any other person on any amounts due under this Reimbursement Agreement.

5. Ownership of Eligible Public Improvements. The City shall own the Eligible Public Improvements, together with the lands and rights-of-way dedicated to the City. Ownership shall be with the City upon completion of construction of the Eligible Public Improvements by Developer and inspection, approval and written acceptance by the City. The City will assume responsibility for all maintenance, repair and replacement of the Eligible Public Improvements once they are completed by Developer and accepted by the City, subject to any applicable warranty periods.

6. Term of Agreement. This Reimbursement Agreement shall terminate at such time as the cumulative reimbursement amount reaches the maximum reimbursement amount set forth herein above.

7. Effect of Agreement. Nothing in this Reimbursement Agreement shall be construed to relieve Developer of any obligations imposed on Developer by Federal, State or local laws, ordinances, regulations, or standards.

8. Waiver and Covenant Not to Sue. Developer specifically agrees to accept the reimbursement specified herein as full and final payment of all claims against the City for the Eligible Public Improvements identified herein. Developer hereby waives any rights or claims against the City for reimbursement of any kind or source other than as set forth herein. Developer further agrees not to seek recovery for any costs associated with enforcement of this Reimbursement Agreement including but not limited to the costs of collection, if any, from other properties that may benefit from the Improvements. Developer further agrees to waive any and all claims against the City for payment in the event that impact fees are not collected from other properties that may benefit from the Improvements, unless the City intentionally does not collect such impact fees for the purpose of avoiding payment to Developer that would otherwise be due under this Agreement.

9. Assignment. Neither the Reimbursement Agreement nor any of its provisions, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities and without the prior written consent of the City.

10. Entire Agreement. This Reimbursement Agreement contains the entire agreement and understanding of the parties with respect to reimbursement to Developer for the Eligible Public Improvements and supersedes all prior written or oral agreements, representations, promises, inducements, or understandings between the parties with regard to any reimbursements to Developer from the City for the Eligible Public Improvements.

11. Binding Effect. This Reimbursement Agreement shall be binding upon the parties hereto and their respective officers, employees, representatives, agents, members, successors, and assigns.

12. Validity and Severability. In the event a court, governmental agency, or regulatory agency with proper jurisdiction determines that any provision of this Reimbursement Agreement is unlawful, that provision shall terminate. If a provision is terminated, but the parties can legally, commercially, and practicably continue to perform this Reimbursement Agreement without the terminated provision, the remainder of this Reimbursement Agreement shall continue in effect.

13. Amendment. This Reimbursement Agreement may be amended only in a writing signed by the parties hereto.

14. Controlling Law, Jurisdiction and Venue. This Reimbursement Agreement shall be governed by the laws of the State of Utah. Venue shall be in Salt Lake County, Utah.

IN WITNESS WHEREOF, the parties hereto have executed this Reimbursement Agreement as of the day and year first hereinabove written.

CITY:

By: _____

Name: Kim V. Rolfe, Mayor

Date: _____

ATTEST:

City Recorder

[Signatures continued on the following page]

EXHIBIT A
PROPERTY TO BE DEVELOPED

All of Lots 3 and 4, FIRST AMENDMENT JORDAN VALLEY T.O.D. SUBDIVISION PLAT "A", according to the official plat thereof, filed in the office of the Salt Lake County Recorder in Plat Book 2014P at page 43.

EXHIBIT B
ELIGIBLE PUBLIC IMPROVEMENTS
ESTIMATED COST OF ELIGIBLE PUBLIC IMPROVEMENTS

Jordan Valley T.O.D. Phase 1 Offsite Sanitary Sewer

This work consists of app. 6,422 Lin FT of new sewer system complete. There is also some jack & bore work under the existing UTA lines, and restoration-related work, plus asphalt removal and replacement work. New sewer lines also require some bypass pumping work. There are 11 each 5' sewer manholes complete, and 20 each 6' sewer manholes complete. There is 7500 SF of 10' gravel access road. There is app. 23,650 ton of imported trench backfill and disposal of spoils. There is removal and replacement of 800 SF of 10' asphalt trail at the south end of the bore.

Plans were prepared by Psomas and are as follows:

C0.00	Cover Sheet	12/5/14
C0.10-C0.20	Notes Sheet	12/5/14
C1.0-C1.13	Sanitary Sewer Plan and Profile	12/5/14
C2.0-C2.3	Utility Trench Details	12/5/14

Schedule of Values is as follows:

	Estimated Costs	Estimated Reimbursement
Mobilization	\$ 60,000	\$ 20,400
Traffic Control & SWPPP	\$ 77,000	\$ 26,180
Bypass Pumping	\$ 72,500	\$ 24,650
Install new sewer system	\$1,168,804	\$ 397,394
30" RR Bore	\$ 86,712	\$ 29,482
All Restoration Resealed	\$ 22,200	\$ 7,548
Remove & Replace Asphalt	\$ 280,395	\$ 95,334
Total:	\$1,767,611	\$ 600,988

Estimated reimbursement:

From impact fees	\$ 377,708.24
Contingent on City Council approval	\$ 223,279.76