

# REIMBURSEMENT POLICIES AND PROCEDURES FOR PRIVATELY-CONSTRUCTED PUBLIC FACILITIES

UPDATED: SEPTEMBER 2019

## 1. PRE-AGREEMENT/PRE-ADVERTISING REQUIREMENTS

Prior to entering into a Credit and Reimbursement Agreement (“Agreement”) with the City and prior to advertising for bids for privately-constructed public facilities, the Developer shall comply with the following requirements:

- a. Submit complete sets of civil improvement plans and landscape plans, if applicable, to the Development Services Department (“DSD”) for review and approval.
- b. Submit an Engineer’s estimate (“Estimate”) to DSD for review and approval. The Estimate shall include the quantities and unit prices of the itemized facilities to be constructed. The Estimate shall clearly itemize reimbursable/eligible facilities from non-reimbursable/non-eligible facilities. If applicable, the Estimate shall also be clearly itemized by the funding sources of reimbursable/eligible facilities (i.e. Developer Impact Fees, Community Facilities Districts or similar).

## 2. BID ADVERTISING, OPENING AND AWARDING

For the bidding process, the Developer shall comply with the following requirements:

- a. Bid package shall be advertised in at least two (2) local Builders’ Exchanges for a period of no less than one week in each publication. Bid opening shall not be less than 14 days after distribution of plans to the Builders’ Exchanges.
- b. Bid package shall include a Non-Collusion Affidavit.
- c. Notify the City in writing of any addenda and/or plan revisions prior to or during the advertising period.
- d. Bid schedule in bid package shall be substantially similar to the Estimate approved by the City (see Section 1b above) regarding format and quantities.
- e. Bids shall be received in sealed envelopes and shall be opened and read publicly at the time and place indicated in the Notice to Bidders.
- f. Bid awards shall be awarded, if at all, to the lowest, responsive responsible bidder.
- g. The agreement amount shall be consistent with the awarded bid amount.
- h. **PREVAILING WAGE REQUIREMENTS SHALL APPLY TO ALL AWARDED CONTRACTS PURSUANT TO THE CALIFORNIA LABOR CODE. CONSTRUCTION CONTRACTS SHALL INCLUDE THIS PROVISION. THE CITY MAY REQUEST CERTIFIED PAYROLL RECORDS AT ANYTIME.**

## 3. PRE-CONSTRUCTION

Prior to construction, the Developer shall comply with the following requirements:

- a. Provide the City proof that bids were advertised in accordance with this policy.
- b. Submit a complete copy of the executed construction contract.
- c. Enter into Agreement with the City. Agreement shall be fully executed and approved by the City prior to construction if the Developer expects to receive credits and/or reimbursement. At the discretion of the City Manager, the Developer may be reimbursed for any eligible City impact fees that were paid in advance of an Agreement for the development listed in the Agreement. NOTE: Agreements require City Council approval, so Developer should consider that requirement in their project schedule.

Agreements shall be fully executed and notarized by Developer no later than two (2) weeks from the date of the City Council meeting to avoid being moved to a future agenda. If Developer has made a request for Agreement to the City's Finance Department no less than thirty (30) days prior to construction, and has provided with that request all documents listed in this Policy including, but not limited to, the improvement plans and Estimate detailed above, Developer will not be subject to the minimum 15% penalty in Section 6 for failure to have a signed Agreement prior to construction. Council still retains its authority to deny an agreement altogether or to provide no reimbursement, but it will not subject the Agreement to a 15% penalty for lack of execution and approval prior to construction. A 15% penalty may still attach to the same agreement for other violations of this Policy.

- d. Schedule and attend a pre-construction meeting held by the City's inspection staff. Scheduling shall occur at least 48 hours in advance.

#### **4. DURING CONSTRUCTION**

During construction, the Developer shall comply with the following requirements:

- a. Adhere to City standards, specifications and procedures for inspection and construction management.
- b. Any revisions to approved plans shall be reviewed and approved in accordance with the City's typical plan check and permitting process.
- c. Any change orders shall require a Potential Change of Work Acknowledgement (PCWA) along with a certified engineer's estimate to be completed and submitted to the City for review and approval. Change order amounts shall not cause the reimbursable amount to exceed the amount established by the executed Agreement.

#### **5. PAYMENT REQUESTS**

Requests for payment shall only be considered when the project is substantially complete (90% or greater), as determined by the City. The improvements or portions thereof to be reimbursed shall be completed in accordance with the approved plans, contracts and change orders. The City will begin reviewing the payment request once all the applicable items listed below have been submitted to the satisfaction of the City:

- a. Executed Payment Request Form
- b. Letter Indicating Percent Complete (90% completion or greater)
- c. Conditional Lien Release(s)
- d. Proof of Payment (i.e. Canceled Checks)
- e. Proof of Bid Advertising
- f. Summary of Bid Results (Bidders, Amounts, etc.)
- g. Executed Construction Contract(s), including Prevailing Wage Provision
- h. Civil Improvement and/or Landscape Plans, if required
- i. Authorization and Justification for Change Orders
- j. Paid Invoices
- k. Summary Linking Paid Invoices to Reimbursable Improvements
- l. Any Other Items as Requested by the City to Justify Payment

With the final payment request, the Developer shall also submit Letter(s) of City Acceptance of Improvements and Unconditional Lien Release(s). All payments to Developer will be made in accordance with the applicable, executed Agreement.

**6. FAILURE TO COMPLY**

It is the Developer's sole responsibility to comply with all the requirements set forth in these policies and procedures. Failure to comply with these policies and procedures may result in the City denying reimbursement, in whole or in part. To the extent any partial reimbursement is allowed by the City following non-compliance with these policies and procedures, and so long as payment is permitted by applicable law, reimbursement shall be subject to a penalty of not less than 15% (and perhaps more) of the otherwise approvable reimbursement amount. The City reserves all rights, and nothing herein shall constitute a waiver or estoppel of any City rights otherwise allowed by law. Nothing herein shall require the City to undertake any action not otherwise allowed by law.

**7. ADMINISTRATION OF POLICY**

The City Manager shall be responsible for administering the provisions of these policies and procedures, all in his or her discretion.