

Request for City Council Committee Action from the Department of Community Planning and Economic Development - CPED

Date: February 19, 2008

To: Council Member Lisa Goodman, Chair, Community Development Cmte. and MCDA Operating Cmte.

Subject: Riverside Plaza Indemnity Obligation

City Recommendation: (1) Approve the key terms for a reimbursement and release agreement among the City of Minneapolis, Minneapolis Community Development Agency and Riverside Plaza, LP resolving certain City indemnity obligations; (2) Authorize appropriate City officials to execute said agreement and related documents consistent with the terms outlined in this report; (3) refer to MCDA board of commissioners.

MCDA Recommendation: Authorize appropriate MCDA officials to execute the above-described agreement and related documents consistent with the terms outlined in this report.

Previous Directives: On March 10, 2006, the City Council approved key terms for an Agreement for Mutual Vehicular Access between the City of Minneapolis, Riverside Plaza, LP, and Crablex, Inc., authorized appropriate city officials to execute necessary access documents, and increased the CPED appropriation by \$925,000 for costs of necessary construction and related improvements.

Prepared by: Kevin Walker, Manager, Multifamily Housing Dvlpt (612) 673-5236 Approved by: Charles Lutz, Deputy Director, CPED _____ Presenters in Committee: Peter Ginder, Deputy City Attorney Kevin Walker, Manager, Multifamily Housing Dvlpt Cathy Polasky, Director, Economic Development

Reviews

Permanent Review Committee (PRC): Approval _n/a_ Date _____
Policy Review Group (PRG): Approval _n/a_ Date _____

Financial Impact

No financial impact _____ Action requires an appropriation increase to the Capital Budget _____ or Operating Budget _____
_____ Action provides increased revenue for appropriation increase
_____ Action requires use of contingency or reserves
_____ Action is within the Business Plan
_____ Action requires a change to the Business Plan

_____ Other financial impact

_____ Request provided to the Finance Department when provided to the Committee Coordinator

Community Impact

Neighborhood Notification: n/a

City Goals: n/a

Sustainability Targets: n/a

Comprehensive Plan: n/a

Zoning Code: n/a

Living Wage/Business Subsidy Agreement Yes_____ No__n/a____

Job Linkage Yes_____ No__n/a____

Other

Supporting Information

In the early 1970's, Riverside Plaza (formerly known as Cedar Square West), was constructed on the super-block bounded by Cedar Avenue, South 4th Street, 15th Avenue South, and South 6th Street. Developed under the Federal New Town – In Town Program, Riverside Plaza consists of eleven interconnected buildings; five of them low-rise and six of them taller buildings (varying from four to thirty-nine stories). The complex contains 1,303 housing units, ranging from studios to four bedroom units, with over 3,000 residents.

Riverside Plaza is the largest affordable housing project in the City of Minneapolis, and houses almost half of the population in the Cedar Riverside – West Bank Neighborhood. The Minneapolis Community Development Agency (MCDA) is the fee owner of the land underlying the Riverside Plaza buildings. Riverside Plaza, LP purchased the property from MCDA under a Purchase Agreement dated December 31, 2001 and Contract for Deed. Riverside Plaza, LP continues to make the required payments to the MCDA/City.

When MCDA purchased the property from the U.S. Department of Housing and Urban Development (“HUD”) in 1988 and leased it to Riverside Plaza, LP, title objections were made regarding three driveway easements (the “Title Defects”). In response, i) HUD provided an undertaking and indemnity to MCDA and Title Services, Inc./Commonwealth Land Title Insurance Company (“Title”) to complete a title registration proceeding it had commenced to correct the Title Defects; ii) MCDA provided an indemnification to Riverside Plaza for damages arising out of failure of the registration proceedings; iii) MCDA provided an undertaking to Title to take all actions necessary to clear the Title Defects, including eminent domain, and agreed to defend and indemnify Title for losses under its title policies which result directly or indirectly for any of the Title Defects; and iv) Title issued title policies to MCDA, Riverside Plaza, LP and its lender(s) insuring against loss or damage because of the Title Defects. The MCDA agreed to a “continuation and reaffirmation of the indemnity” to Riverside Plaza, LP in the 2001 Purchase Agreement. The City has assumed these MCDA obligations in connection with the 2003 reorganization of the City's development function.

The City's indemnity obligation relates to three areas: 1) Chase driveway, which provides access to the Chase parking ramp from South 6th Street across Crablex, Inc. ("Crablex") property; 2) Vacated 5th Street driveway, which provides access to the Riverside "E" Building parking lot and loading dock from 15th Avenue South across Crablex property; and 3) Cedar Avenue driveway, which provided mid-block access to Riverside Plaza across Crablex property.

Since 2004, the City has provided pedestrian and vehicular access to Riverside Plaza pursuant to a Temporary License Agreement with Crablex. The License covers both the "Vacated 5th Street" and "Chase" driveways. (The Cedar Avenue driveway has not been used for vehicle access for a number of years). In December, 2007, the City entered into a twenty-second amendment to the License extending Riverside Plaza's right to use the Vacated 5th Street and Chase driveways to March 31, 2008.

The City has been unsuccessful in its attempts to facilitate negotiation of mutual private access easements between Riverside Plaza, LP and Crablex, as was contemplated in the City Council action dated March 10, 2006. Staff concluded that a mutually agreeable settlement of the vehicular access issues was unlikely while litigation between the parties on other but related easement issues pended. On October 29, 2007, the Hennepin County district court granted summary judgment in favor of Riverside Plaza, LP, MCDA, the City, and Cedar Cultural Center on these related easement issues, but Crablex has indicated that it intends to appeal.

Given the protracted nature of negotiations to date, uncertainty about the timing of a final resolution to the litigation and uncertainty about further extensions past the March 31, 2008 license expiration date, City staff and Riverside Plaza, LP propose a partial solution that can be implemented independent of Crablex. Riverside would relocate the Chase driveway entirely onto Riverside property. The total cost to the City would not exceed \$386,908. This solution is partial inasmuch as it does not involve Title or address the City's indemnity obligation on Vacated 5th Street or Cedar Avenue. But it can be implemented without further delay and provides Riverside with crucial access to the Chase Ramp and indirect access to its loading docks.

The costs of constructing this alternative Chase Ramp access are further detailed in an attachment to this report. Riverside also is seeking City and Title reimbursement of additional costs of providing alternative access to its "E" building and loading docks, but Title is unwilling to participate in a partial settlement at this time. The parties expect to resolve remaining issues by the end of the year through negotiation, mediation and/or final resolution of the pending litigation. Staff will return to Council with a final settlement agreement pertaining to the Cedar Avenue and Vacated 5th Street driveway obligations.

Riverside must provide a release to the City of the City's and Title's indemnification obligations on the Chase driveway in exchange for payment of the Chase Ramp costs described above.

Exhibits:

Exhibit A: Depiction of Riverside Property

Exhibit B: Chase Ramp Driveway Area

Exhibit C: Chase Ramp Driveway Reconstruction Costs

EXHIBIT B

CHASE RAMP DRIVEWAY AREA

Existing Chase Ramp Driveway Location

Relocated Chase Ramp Driveway

Property Line

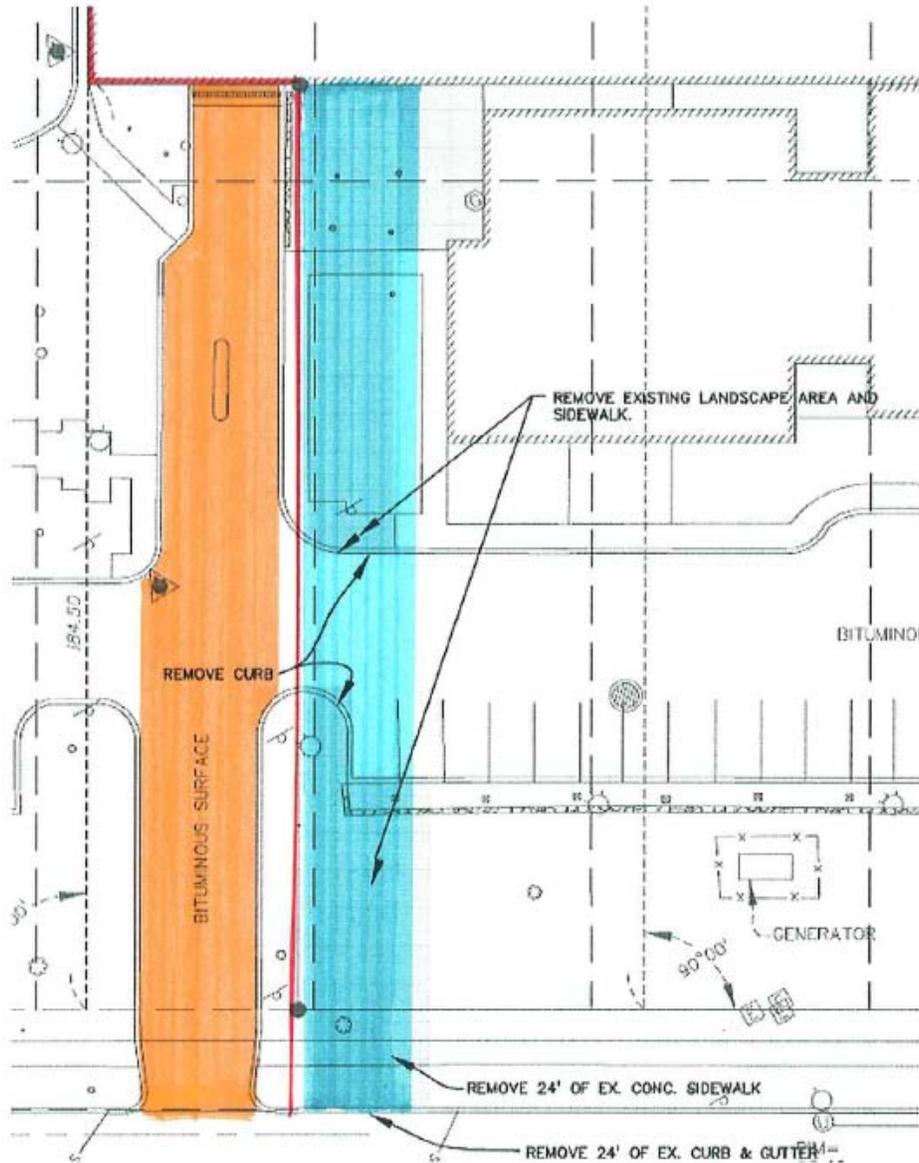


EXHIBIT C

CHASE RAMP DRIVEWAY RECONSTRUCTION COSTS

ITEM	COST ESTIMATE
Retaining wall	\$26,285
Site preparation/grading	37,900
Driveway trench drain	7,700
Parking barricades	3,331
Concrete	55,000
Asphalt	50,000
Electrical	95,000
Landscape repair	5,000
Fence at property line	20,000
Subtotal: Direct Construction	\$300,216
Contingency	9,803
General Conditions	24,508
Total: Direct Construction	\$334,527
Design, Engineering, Surveying	27,873
Legal	24,508
TOTAL CHASE RAMP RECONSTRUCTION	\$386,908