

TO: James L. App, City Manager
FROM: Joseph M. Deakin, Public Works Director
SUBJECT: Reimbursement Agreement for Traffic Signal Upgrades
DATE: July 1, 2003

NEEDS: For the City Council to consider approving a Reimbursement Agreement for traffic signal upgrades at the intersection of Creston and Niblick/Sherwood Roads.

FACTS:

1. East Village Associates is developing a shopping center at the northwest corner of Creston and Niblick/Sherwood Roads ("Food 4 Less").
2. As a Condition of Approval, the developer agreed to install certain public improvements including an upgraded traffic signal at Creston and Niblick/Sherwood Roads.
3. City standard policies for traffic signal design include installing video detection for signal triggers (versus the outmoded loop detectors). Further, State signal design standards now require double-faced single-line legends in Internally Illuminated Street Name Signs (IISNS). The existing traffic signal at Creston and Niblick/Sherwood Roads does not, currently, meet this standard.

**ANALYSIS
AND**

CONCLUSION: The City could take this opportunity to upgrade the traffic signal at Creston and Niblick/Sherwood Roads to meet current standards. East Village Associates is required, as part of their design to rebuild the Sherwood/Creston Roads corner, to construct a new signal-light pole there. The development project will upgrade the traffic signal accessories in accordance with current City and State standards for the replaced pole, including video detection and State Standard IISNS.

There is no project nexus to require East Village Associates to upgrade the other traffic signals controlling the Niblick/Sherwood and Creston Roads intersection. In other words, the development project will only upgrade one out of four signal controls at the intersection at their cost. To maintain a consistent standard, and to take full use of the improved controls being installed by East Village Associates, the City needs to upgrade the other three traffic with video detection and State Standard IISNS. The work on the City's three poles needs to be reimbursed to the developer, or otherwise constructed, in order for the City to maintain the consistent standard at this intersection.

By installing all traffic signal certain features at this time, the City minimizes disruption of public service, as the upgrade improvements are related to, and coordinated with, the shopping center development. The attached Reimbursement Agreement would allow the City to reimburse the developer up to \$36,402.50 retrofit costs to the three traffic signal costs outside the development project.

POLICY

REFERENCE: Planning Commission Resolution No. 02-044 approving East Village Associates development project.

FISCAL

IMPACT:

The traffic signal upgrade was not included in the recent AB 1600 Development Impact Fee Study so traffic mitigation fees are not being collected for this project. A budget appropriation will be required, since the project is not on the approved Capital Improvement Projects List.

Funding could be authorized from the residual balance in the Signalization Impact Fee Fund. The Capital Improvement Projects appropriation amounts indicate there will be sufficient funds for this upgrade project.

OPTIONS:

a. For the City Council to approve Resolution No. 03-xx:

- 1) Authorizing the allocation of \$36,500 from the Traffic Mitigation Fee Fund to Budget Account No. 214-910-5452-452; and
- 2) Directing the Mayor to sign the attached Reimbursement Agreement between the City and East Village Associates.

b. Amend, modify or reject the above option.

Attachments (2)

- 1) Reimbursement Agreement
- 2) Resolution

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the "Agreement") is entered into this ___ day of _____, 2003, by and between the CITY OF EL PASO DE ROBLES, a municipal corporation (the "City"), and EAST VILLAGE ASSOCIATES, LLC, a California limited liability company ("East Village").

Recitals

A. East Village is in the process of developing a nine-acre site with a neighborhood-serving retail shopping center and appurtenant improvements (PD 02-003) (the "Shopping Center") within the limits of the City.

B. As conditions to the approval of the Shopping Center, contained in Planning Commission Resolution No. 02-044, Condition No. 16, East Village agreed to install certain public facilities that would serve not only the Shopping Center, but also the community, including installation of an upgraded traffic signal (the "Upgraded Traffic Signal Improvements") at the intersection of Creston and Niblick (the "Public Property"). Consequently, the Planning Commission recommended that East Village be reimbursed for the incremental increased cost for installing the Upgraded Traffic Signal Improvements.

C. The City has determined that the installation of the Upgraded Traffic Signal Improvements at this time will avoid future increased costs and disruption of public service because they are integrally related to and will be coordinated with the development of the Shopping Center.

Agreements

NOW, THEREFORE, THE CITY AND EAST VILLAGE HEREBY AGREE AS FOLLOWS:

Section 1. Upgraded Traffic Signal Improvements.

East Village shall cause to be designed, constructed and installed the Upgraded Traffic Signal Improvements in accordance with plans and specifications approved by the City.

Section 2. Plans; Permits.

Prior to the commencement of construction and installation of the Upgraded Traffic Signal Improvements, East Village shall prepare and submit plans and specifications to the City for its approval. In addition, East Village shall secure any and all permits that may be required by the City or any other governmental agency affected by such construction and installation work. City shall provide all proper assistance to East Village in securing these permits.

Section 3. Insurance; Indemnification

Prior to the commencement of construction of the Upgraded Traffic Signal Improvements, East Village shall furnish, or cause to be furnished, to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the aggregate amount of \$1,000,000, naming the City as an additional insured. The policy limits of such policies may be in lesser amounts if East Village shall provide the City with duplicate originals or appropriate certificates of a binder (approved by the City) which indemnifies and holds the City harmless from and against all liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person, or to the property of any person, which shall occur on or adjacent to the Public Property and which shall be directly or indirectly caused by any acts done thereon, or by any errors or omissions, of East Village and its agents, servants, employees and contractors, and which provides for the defense of the City against all claims or causes of action arising therefrom. Such insurance policies shall be maintained and kept in force, and such obligation to indemnify shall continue, during periods of construction upon the Public Property until City has approved and accepted the Upgraded Traffic Signal Improvements.

Section 4. Nondiscrimination

East Village, for itself and its successors and assigns, agrees that in the construction of the Improvements, East Village will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

Section 5. Payment for the Upgraded Traffic Signal Improvements.

In consideration of the undertakings of East Village under Section 1 of this Agreement, City agrees to reimburse East Village for the costs incurred by East Village for such Upgraded Traffic Signal Improvements in the amount of THIRTY SIX THOUSAND FOUR HUNDRED TWO AND 50/100 DOLLARS (\$36,402.50).

Upon completion of all of the Upgraded Traffic Signal Improvements, East Village shall submit documentation regarding the cost of the Upgraded Traffic Signal Improvements, including, but not limited to, copies of its construction contract(s), invoices, cancelled checks, proof of payment of prevailing wages, complete lien releases with respect to all Upgraded Traffic Signal Improvements and any other documentation reasonably requested by City.

Such payment by the City shall only be made after City has received all documentation required by it, as set forth in this Section 5, and has approved and accepted the Upgraded Traffic Signal Improvements. Such payment shall be made within thirty (30) days of City's acceptance of the Upgraded Traffic Signal Improvements.

Section 6. Warranty.

East Village shall guarantee or warranty the work done and the Upgraded Traffic Signal Improvements provided pursuant to this Agreement for a period of one (1) year after completion of such work and commencement of operation of the video detection cameras to be installed as part of the Upgraded Traffic Signal Improvements against any defective work or labor done or defective materials furnished. If within the warranty period any work or improvements or part thereof done, furnished, installed,

constructed or caused to be done, furnished, installed or constructed by or on behalf of East Village fails to fulfill any of the requirements of this Agreement or the plans and specifications referenced herein, East Village shall without delay and without any cost to the City, repair or replace or reconstruct (or cause to be repaired or replaced or reconstructed) any defective or otherwise unsatisfactory part or parts of the work or Upgraded Traffic Signal Improvements. East Village further acknowledges and understands within the one (1) year warranty period East Village will bear the total responsibilities for all repair and/or replacement of the Upgraded Traffic Signal Improvements as installed, reserving to East Village the right of recourse or indemnity against any third party who causes damage to the Upgraded Traffic Signal Improvements. Should East Village fail to act promptly or in accordance with this Section 6, East Village hereby authorizes the City, at City's option, to perform the work 20 days after mailing written notice of default to East Village and to East Village's surety, and agrees to pay the cost of such work by City. Should City determine that an urgency requires repairs or replacements to be made before East Village can be notified, City may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work and East Village shall pay to City the cost of such repairs.

Section 7. Compliance with Law.

East Village agrees that it shall comply with all applicable laws applicable to the work to be described in this Agreement, including, but not limited to those laws regarding the payment of prevailing wages.

Section 8. Termination of this Agreement.

This Agreement and the obligations of East Village and the City hereunder shall terminate upon the full payment of the City for the Upgraded Traffic Signal Improvements; provided, however, that the warranty provisions of Section 6 shall survive such termination and shall continue in effect for the period of time set forth therein.

Section 10. Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by any party for a breach of this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees and such other costs as may be determined by a court of competent jurisdiction.

IN WITNESS WHEREOF, East Village and the City have executed this Agreement as of the date first above written.

CITY OF EL PASO DE ROBLES, a municipal corporation

By _____
Frank R. Mecham, Mayor

Approved as to Form:

Attest:

By: _____
Iris P. Yang
City Attorney

By: _____
Sharilyn M. Ryan
Deputy City Clerk

“CITY”

EAST VILLAGE ASSOCIATES, LLC, a California limited liability company

By: _____
Elizabeth S. Hastings

Its: _____

“EAST VILLAGE”

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
AUTHORIZING ALLOCATION OF \$36,500 FROM THE TRAFFIC MITIGATION FEE FUND
AND DIRECTING THE MAYOR TO SIGN THE ATTACHED REIMBURSEMENT AGREEMENT
BETWEEN THE CITY AND EAST VILLAGE ASSOCIATES

WHEREAS, East Village Associates is developing a shopping center at the northwest corner of Creston and Niblick/Sherwood Roads; and

WHEREAS, as a Condition of Approval, the developer agreed to install certain public improvements including the installation of an upgraded traffic signal at the intersection of Creston and Niblick/Sherwood Roads; and

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY

SECTION 1. The City Council of the City of El Paso de Robles does hereby authorize the allocation of \$36,500 from the Signalization Development Impact Fee Fund to Budget Account No. 214-910-5452-452 to reimburse the developer for the City's pro-rata share of the traffic signal costs, not to exceed \$36,402.50.

SECTION 2. The City Council of the City of El Paso de Robles does hereby direct the Mayor to sign the attached Reimbursement Agreement between the City and East Village Associates.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 1st day of July 2003 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk