

11.2. Discussion and Consideration of an Impact Fee Agreement with Mountainview Plaza, LLC for the Construction of Roadway Improvements for Herriman Auto Row and Miller Crossing Drive – Blake Thomas, Community Development Director



STAFF REPORT

DATE: March 21, 2024

TO: The Honorable Mayor and City Council

FROM: Blake Thomas, Community Development Director

SUBJECT: Discussion and Consideration of an Impact Fee Agreement with Mountainview Plaza, LLC for the Construction of Herriman Auto Row and Miller Crossing Drive

RECOMMENDATION:

Staff recommends that the City Council approve the Impact Fee Agreement.

ISSUE BEFORE COUNCIL:

Should the City Council approve an Impact Fee Agreement with Mountainview Plaza, LLC?

BACKGROUND/SUMMARY:

The Mountainview Plaza project is a 6-acre commercial development located at the southeast corner of Miller Crossing Drive and Herriman Main Street. The master development agreement for the project was approved by the city council on February 22, 2023. Phase 1 of the project is currently being constructed. The project is bound by three roadways on the north, east, and west. Only one of those roads has been constructed at this time, Herriman Main Street. Future Miller Crossing Drive and Herriman Auto Row will bound the property on the north and east, respectively. All roads adjacent to Mountainview Plaza are classified as collectors, or larger, and construction costs would typically be eligible to be paid for with transportation impact fees collected by the City. However, in this case, Miller Crossing Drive and Herriman Auto Row are projects included in the Auto Mall Public Infrastructure District (PID) and as such will be solely funded and constructed by the developer of the Auto Mall Project and are not eligible for impact fees from the City.

DISCUSSION:

It is typical for projects that the developer is required to construct all roadways adjacent to the project. If those roads are collector or arterial roads and deemed “impact fee eligible” by the City’s adopted Transportation Master Plan and Impact Fee Study, then the city is required to reimburse the developer for the improvements with funds from transportation impact fees that have been collected from the project as it progresses. Impact fees are paid by the developer at

the time a building permit is issued. The developer of the Mountainview Plaza Project (MVP) has requested that the city not collect transportation impact fees for the project.

MVP is unique because the roads that the developer is required to construct are classified as collectors but are included in the Auto Mall PID. Utah State Law exempts areas located within a PID from being subject to Impact Fees. As a result, the infrastructure in the PID must be funded and constructed by the PID, who in this case is the developer of the Auto Mall Project. MVP's developer has coordinated with the Auto Mall developer to fund their portion of Miller Crossing Drive and Herriman Auto Row. In this case, the PID is acting in the role that the City typically does by coordinating with the developer to fund the construction of their portion of the road.

This request does not impair the City's ability to ensure the roadways contemplated in the City's transportation master plan are constructed to the appropriate size and in the locations necessary to meet the transportation needs of Herriman. It will allow the MVP developer to utilize funds to directly negotiate with the board of the Auto Mall PID regarding cost sharing for the construction of the roadways necessary to proceed with future phases of the project.

ALTERNATIVES:

<u>Alternative</u>	<u>Pros</u>	<u>Cons</u>
1. Approve the Impact Fee Agreement [Recommended]	Allows the MVP developer to coordinate directly with the Auto Mall developer regarding the funding and construction of Miller Crossing Drive and Herriman Auto Row	Reduces the City's transportation impact fee revenue.
2. Approve the Impact Fee Agreement with changes	Allows the agreement to include terms that may not have been contemplated when drafted.	
3. Not approve the Impact Fee Agreement		Could delay completion of the project due to increased costs incurred by developer.

FISCAL IMPACT:

It is estimated that the transportation impact fee revenue from the MVP would total approximately \$550,000. The estimated costs to design and construct the roadway improvements for Miller Crossing Drive and Herriman Auto Row are estimated to slightly exceed \$550,000.

ATTACHMENTS:

1. Impact Fee Agreement

**MOUNTAINVIEW PLAZA
IMPACT FEE AGREEMENT**

This Impact Fee Agreement (“Agreement”) is made this _____ day of _____, 2024, by and between **Herriman**, a Utah municipality (“City”), and Mountainview Plaza, LLC, a Utah Limited Liability Corporation (“Developer”) (collectively, the “Parties”).

Recitals:

- A. Developer anticipates constructing Mountainview Plaza, a commercial development located at approximately 12200 South Herriman Main Street in Herriman, Utah (“Project”).
- B. As part of the project, Developer will install the half-width of road improvements along Miller Crossing Drive and Herriman Auto Row, (“Improvements”). The other half of the road improvements are to be installed by the Auto Mall Public Infrastructure District (AMPID).
- C. To facilitate development of the Property, Developer is willing to coordinate with AMPID for the construction of the Improvements, as depicted in Exhibit “A” attached hereto.
- D. The City desires to encourage the Developer to expedite the construction schedule of the development of the Project.
- E. Developer has dedicated or intends to dedicate the Improvements with the underlying real property (“Real Property”), where applicable, to the City.
- F. The cost of Improvements will meet or exceed the amount of Transportation Impact Fees the City would have collected and used to reimburse the Developer if the road improvements had remained in the Transportation Impact Fee Analysis.

Agreement:

NOW, THEREFORE, in consideration of the premises, covenants, and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound, agree as follows:

1. **Real Property.** The Developer hereby represents and warrants to the City that it is the authorized representative of the fee owner of the Real Property and that upon reasonable request, the Developer will transfer title of the Real Property to the City, free and clear of all liens and encumbrances.
2. **Improvements.** Developer agrees to coordinate and cause to be constructed the curb and gutter, asphalt, basecourse, storm drain, striping, and signing for one-half of Herriman Auto Row and Miller Crossing Drive that is located adjacent to the Project, as depicted on Exhibit A attached hereto (“Improvements”). The Developer hereby represents and warrants to City that it is the owner of the Improvements and that upon reasonable request, Developer will transfer title of the Improvements to the City, free and clear of all liens and encumbrances.
3. **Condition of Improvements.** Developer has caused or will cause the installation and construction of the Improvements (the “Work”) to be completed at Developer’s sole cost and expense by qualified licensed contractors. Prior to City’s acceptance of ownership of the Improvements, Developer shall provide evidence satisfactory to the City that all labor,

materials, equipment, rental, and other costs incurred in performing the Work have been paid in full and that the City will receive the Improvements free and clear of all liens, claims, and encumbrances.

4. **Indemnification and Warranty.** To the fullest extent allowed by law, Developer shall indemnify, defend, and hold harmless the City, its affiliates, agents, employees, and elected and appointed officials from and against any and all actions, claims, losses, damages, and expenses (including reasonable attorneys' fees) arising out of or connected in any way to Developer's acts or omissions in connection with the design, fabrication, construction, installation, operation, maintenance, or testing of the Improvements (ordinary wear and tear excepted). If any claim is made against the City to which the City claims a right of indemnification from Developer, the City shall have the right, but not the obligation, to assume the entire control of the defense and/or settlement of the claim, through attorneys selected by the City, and Developer shall cooperate fully with the City in connection with the same. If the City elects to assume control of the defense and/or settlement of the claim, Developer shall be liable for all City's related costs and expenses, including, without limitation, reasonable attorneys' fees, all judgments or verdicts, and all monies paid in settlement. Further, Developer represents, warrants, and certifies to the City that all work performed and materials used in connection with the Improvements are free from defect in material or workmanship; and all work performed and materials used shall conform to approved City specifications and applicable construction codes and local laws and ordinances regarding the construction of similar facilities; and that the material used is free from defect in design or otherwise suitable for their intended purpose. The warranty set forth in this section shall expire one year after the date of conveyance of the Improvements to the City.
5. **Agency's Obligations.** City will not collect Transportation Impact Fees for the Project from Developer, understanding that Developer will use the funds that would have been paid for Transportation Impact Fees to fund the design and construction of the Improvements.
6. **Developer's Obligations.** Developer has funded and agrees to fund One hundred percent (100%) of the cost for construction of the Improvements, as shown on Exhibit "A". Developer shall be responsible to pay to the City the full Transportation Impact Fee for all portions of the Project for which a building permit has been issued if the Improvements are not constructed and accepted by the City by April 15, 2025. This Agreement will terminate once Improvements receive final acceptance and are conveyed to the City, provided they are constructed and accepted by the City before April 15, 2025.
5. **Miscellaneous Provisions.**
 - (a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.
 - (b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope, or interpretation of any of the terms or provisions of this Agreement or the intent hereof.
 - (c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.
 - (d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Agreement.

- (e) *Waiver of Breach.* Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.
- (f) *Cumulative Remedies.* The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy, or priority allowed by law.
- (g) *Amendment.* This Agreement may not be modified except by an instrument in writing signed by the parties hereto.
- (h) *Interpretation.* This Agreement shall be interpreted, construed, and enforced according to the substantive laws of the state of Utah. This Agreement shall be interpreted in an absolutely neutral fashion, and ambiguities herein shall not be construed against any party as the “drafter” of this Agreement.
- (i) *Attorneys’ Fees.* In the event any action or proceeding is taken or brought by either party concerning this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys’ fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.
- (j) *Notice.* All notices provided for herein shall be in writing and shall be given by first class mail, certified or registered, postage prepaid, addressed to the parties at their respective addresses set forth above or at such other address(es) as may be designated by a party from time to time in writing.

Mountainview Plaza, LLC
Attn: Aaron Osmond
11466 County Knoll Road
South Jordan, UT 84095

Herriman City
Attn: City Manager
5355 South Herriman Main Street
Herriman, UT 84096

- (k) *Time of Essence.* Time is the essence of this Agreement.
- (l) *Assignment.* Applicant may not assign its rights, or delegate its duties, hereunder without City’s prior written consent. City may freely assign its rights and delegate its duties under this Agreement, whereupon the assignee shall succeed to, and City shall be correspondingly released from, all of City’s rights, duties, and liabilities hereunder.
- (m) *Exhibits and Recitals.* The recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have signed this Agreement on the day and year last below written.

HERRIMAN

By _____
Lorin Palmer, Mayor

Dated: _____

ATTEST:

Jackie Nostrom, City Recorder

STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by **Lorin Palmer** and **Jackie Nostrom**, as the Mayor and City Recorder, respectively, of **HERRIMAN**, a Utah municipality.

Notary Public

DEVELOPER

Mountainview Plaza, LLC,

By: _____

Its: _____

Dated: _____

State of Utah)
 ss.
County of Salt Lake)

On the ____ day of _____, 2024 personally appeared before me, _____
who duly acknowledged that he executed the within document as the _____ of the
_____.

NOTARY PUBLIC

Exhibit A

IMPROVEMENTS

