

TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council Date: April 10, 2012

From: Brad Miller, Town Engineer Item No: 9

Subject: RELEASE OF SECURITIES FOR REATA ROAD STORM DRAIN IMPROVEMENTS – PARCEL MAP 17193, HOME DEPOT

T.M. Approval: _____ Budgeted Item: Yes No N/A

RECOMMENDED ACTION:

That the Town Council:

1. Direct staff to fully release and exonerate the Reata Road Storm Drain Improvement Bonds for Parcel Map 17193.
2. Approve a Mutual Waiver and Release Letter Agreement between the Town and Home Depot.

SUMMARY:

When the Town Council accepted the final map for Parcel Map 17193, construction Agreements and securities were required. The developer has now requested the release of securities since it has fulfilled the terms of the agreements to construct various improvements, and mitigate others, as required by the Parcel Map 17193 Conditions of Approval.

Staff has inspected and approved the construction of the completed improvements and mitigation measures. Staff recommends that the Town accept the improvements and mitigations as complete, and recommends 100% exoneration of the Reata Road Storm Drain Improvement Bond.

In addition, at the time the project's storm drain improvements were being planned and installed, the applicant agreed to install an off-site storm drain to convey project runoff to the Mojave River. However, those improvements were ultimately replaced with an onsite storm drain system, which complied with the project's conditions of approval. As a result, the Town staff, in consultation with the Town Attorney, believes that it would be

appropriate for the Town Council to approve a waiver and release of Home Depot's obligations to construct the off-site storm drain to the Mojave River.

Bond amounts for improvements are as follows:

<u>Parcel Map 17193</u>	<u>Performance Bond</u>	<u>Labor and Materials</u>
Reata Road Storm Drain Improvements	\$324,612	\$162,306



Town of Apple Valley

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14955 Dale Evans Parkway • Apple Valley, California 92307

March 23, 2012

West Coast Store Support Center
Home Depot
3800 West Chapman Avenue
Orange, CA 92868

Re: Home Depot Bond # 10484886 Release and Letter Agreement dated
January 8, 2007

Dear Ms. Erika Strawn:

We are writing in follow up to our conversation last week, regarding the above referenced bond and Letter Agreement. As you know, Home Depot has requested a release of the bond, which release has previously been withheld pending the resolution of the Town and Home Depot dispute regarding their respective rights and obligations under the Letter Agreement (the bond release and Letter Agreement dispute being referred to collectively as the "Dispute"). The purpose of this letter is to propose a method for resolving, once and for all, the Dispute and providing for a release of the bond by the Town, as set forth in more detail below.

This letter, once executed by Home Depot by its authorized representative and approved by the Town Council, shall serve as a full waiver, release and discharge by both parties, on behalf of themselves, their respective officials, officers, directors, employees, agents, representatives, assigns, shareholders, trustees, attorneys, and successors in interest, as applicable, of one another, from all rights, claims, cross-claims, demands, actions, or causes of action, including those for damages, compensation, punitive damages, interest, costs, attorneys' fees, injunctive or declaratory relief, or for relief by way of writ of mandate, or for demands, damages, refunds, debts, liabilities, reckonings, accounts, obligations, costs, expenses, liens, actions, causes, and causes of action of whatever kind, at law or in equity, that each has now or may have against one another arising from the facts and circumstances involved in the Dispute.


Both Home Depot and the Town expressly acknowledge and waive any and all rights under Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

If the resolution set forth in this letter is agreeable to Home Depot, please have an authorized representative of Home Depot sign and date where indicated below and return a copy to the Town at the address above. Once the Town receives this letter back, signed by Home Depot, Town Staff will agendize its consideration for approval by the Town Council along with a recommendation for a release of the bond by the Town Council.

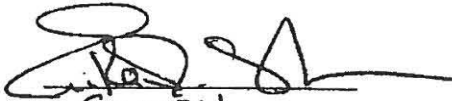
Should you have any questions, please do not hesitate to contact me at your earliest opportunity.

Sincerely,



Frank Robinson
Town Manager
Town of Apple Valley

Home Depot U.S.A., Inc.

Signed: 
Title: Council
Date: 4/4/12