



CITY COUNCIL AGENDA REPORT

MEETING DATE: JANUARY 20, 2009

ITEM NUMBER:

**SUBJECT: INDEMNIFICATION AND MAINTENANCE AGREEMENT FOR SYMPHONY TOWERS
PARKING STRUCTURE AT 531 ANTON BOULEVARD**

DATE: JANUARY 8, 2009

FROM: PUBLIC SERVICES DEPARTMENT, ENGINEERING DIVISION

PRESENTATION BY: PETER NAGHAVI, DIRECTOR, DEPARTMENT OF PUBLIC SERVICES

**FOR FURTHER INFORMATION CONTACT: ERNESTO MUÑOZ, CITY ENGINEER, AT 714-754-
5335**

RECOMMENDATION:

1. Approve the Maintenance and Indemnification Agreement (Attachment 1) for the Symphony Towers Parking Structure
2. Authorize the Mayor and the City Clerk to execute the Agreement

BACKGROUND:

In January 2001, the City of Costa Mesa and the property owners and lease holders of 531 Anton Boulevard entered into a maintenance and indemnification agreement (Attachment 2) for the construction of a parking structure directly over a portion of the City's storm drain easement. The parking structure was built in conjunction with the Experian Complex building construction. The City's storm drain easement is 20 feet in width and includes a 54 inch storm drain pipe connecting to the Airport Channel located to the south of the project and adjacent to the I-405 Fwy. Attachment 3 provides details on the location.

In August 2007, the new property owners, RREEF America Reit II Corp. ("RREEF"), submitted a Planning Application to construct a high rise residential development (Symphony Towers) and a three-level parking structure at 531 Anton Boulevard. The proposed parking structure would be located just south of the existing parking structure mentioned above and would also be constructed over the same storm drain easement. Attachment 3 also shows the location of the new parking structure and the City's easement. On January 14, 2008, RREEF's planning application for the parking structure was approved. The Planning Commission granted an extension which was approved on January 12, 2009.

ANALYSIS:

In order to allow for the parking structure to encroach over the public storm drain easement and allow private runoff connections to the storm drain, a maintenance and easement agreement is required between the City and REEFF. The Agreement will indemnify the City from liability during and after the construction of the parking structure over the City Storm Drain easement and also provide access to the City for maintenance of the storm drain. In addition, the agreement will exempt and indemnify the City from private drainage connections to the storm drain.

ALTERNATIVES:

The City Council could choose not to approve the Maintenance and Indemnification Agreement for the construction of the Symphony Towers parking structure over the storm drain easement. However, this alternative is not recommended as it reverses the City's prior approval and will require the developers to consider other options such as relocating the storm drain system or changing the parking structure location.

LEGAL REVIEW:

The City Attorney's office has reviewed and approved the attached Maintenance and Indemnification Agreement as to form.

CONCLUSION:

Staff recommends that the City Council approve and authorize execution of the Maintenance and Indemnification Agreement by the Mayor and the City Clerk.

ERNESTO MUÑOZ
City Engineer

PETER NAGHAVI, Director
Department of Public Services

- Attachments: 1 – [Proposed Maintenance and Indemnification Agreement](#)
2 – [January 2001 Original Maintenance and Indemnification Agreement](#)
3 – [Location Map](#)

Distribution: City Manager
Deputy City Clerk
City Attorney
Development Services Director
Staff