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OCT 27 2011



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MEMORANDUM Transportation & Development - Council Memo TDE 12-003

DATE: October 27, 2011

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
PAT MCDERMOTT, ASSISTANT CITY MANAGER *PM*
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJZ*
SHEINA HUGHES, CITY ENGINEER *SH*

FROM: DARYL RACZ, DEVELOPMENT PROJECT ADMINISTRATOR *DR*

SUBJECT: APPROVE OFFSITE LUMP SUM AGREEMENT NO. OA10-004 WITH ARTESIAN 186, LLC, DEFERRING THE HALF STREET IMPROVEMENTS ON GILBERT ROAD AS A CONDITION OF THEIR DEVELOPMENT AND ACCEPTING A LUMP SUM PAYMENT OF \$268,241.

RECOMMENDATION:

Staff recommends Council approve Offsite Lump Sum Agreement No. OA10-004 with Artesian 186, LLC, deferring the half street improvements on Gilbert Road as a condition of their development and accepting a lump sum payment of \$268,241.

BACKGROUND AND DISCUSSION:

As a condition of development, Artesian Ranch, located at the Northwest Corner of Ocotillo and Gilbert Road, deferred roadway work on Gilbert Road adjacent to their property. Half street improvements, including a full median and one opposing lane and required underground utilities along the frontage of the property in Gilbert Road, were deferred in lieu of a Lump Sum Payment of \$268,241 made to the City.

This agreement is intended to cover the cost for the above mentioned work. A lump sum agreement was used to secure their financial obligation to the City for the deferred work as well as release the developer from any future obligations for the improvements.

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FINANCIAL IMPLICATIONS:

Funds in the amount of \$268,241 have been received from the developer and are being held in an interest bearing account to use for the future construction of Gilbert Road.

PROPOSED MOTION:

Move that Council approve Offsite Lump Sum Agreement No. OA10-004 with Artesian 186, LLC, deferring the half street improvements on Gilbert Road as a condition of their development and accepting a lump sum payment of \$268,241, and authorize the Mayor to sign the agreement.

Attachments: Agreement No. OA10-004

After Recording, Return
Original Document to:

REC
MAR 16 2011

Chandler City Clerk
PO Box 4008
Mail Stop 606
Chandler, AZ 85244-4008

**OFFSITE IMPROVEMENT
AND CONSTRUCTION EASEMENT AGREEMENT
(Lump Sum Payment)**

AGREEMENT NUMBER: 10-004

This Agreement, effective as of this 29th day of JUNE, 2011, is entered into by and between the CITY OF CHANDLER, an Arizona municipal corporation (the "City"), and Artesian 186, LLC, an Arizona limited liability company (the "Developer").

RECITALS

- A. Chapters 47 and 48 of the Chandler City Code require the Developer to prepare plans and specifications and to construct certain offsite improvements in conformance with municipal standards and requirements.
- B. Under Arizona law, the City is required to receive assurances from the Developer that the offsite improvements will be constructed.
- C. Under Section 48-12.2 of the Chandler Subdivision Code, the Developer is permitted to meet his responsibilities for construction of offsite improvements by participating in an improvement district if one is organized at the discretion of the City and the participating property owners.
- D. Under Section 47-11 of the Chandler City Code, the City's Public Works Director is authorized to defer construction of offsite improvements under certain conditions where the construction of such offsite improvements would not be practical at the present time.
- E. The Developer has prepared plans and specifications accepted by the City in connection with the required offsite improvements adjacent or related to the following described real property:

**SEE EXHIBIT "A", LEGAL DESCRIPTION, ATTACHED HERETO AND
INCORPORATED HEREIN BY REFERENCE.**

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F. The City's Public Works Director has determined that it is appropriate to defer construction of some of the required offsite improvements adjacent or related to the above-described real property for a fixed period of time. The offsite improvements which are appropriate to defer are described in paragraph 1 below.

G. In lieu of deferring construction of the offsite improvements for a fixed period of time through the posting of a bond or other security, the Developer desires to make a single lump sum payment to the City of the estimated total costs of his improvement obligation (the "Improvement Costs"), thereby making full satisfaction of that obligation.

H. The City is willing to accept such a lump sum payment as full satisfaction of the offsite improvement obligation for the offsite improvements described in paragraph 1 below provided that the Developer also covenants and agrees to grant an easement to the City granting City the right to use the above-described real property to the extent required by the City to complete the construction of the offsites described below.

COVENANTS

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth below, the parties agree as follows:

1. Except as otherwise provided herein, the Developer is responsible for construction of the following offsite improvements (the "Offsites"), adjacent or related to the above-described property:

- Half street improvements including a full median and one opposing lane and required underground utilities along the frontage of the property in Gilbert Road.

2. The cost for the above referenced improvements is Three hundred twenty nine thousand, two hundred five dollars and No Cents (\$268,241.00). This amount has been determined by the City's Public Works Director or designee based upon estimates more fully itemized in Exhibit "B", attached hereto and incorporated by this reference, and is accepted by the Developer.

3. In conjunction with final approval of the Developer's site plan for the above-described real property, the Developer shall pay to the City in a single, lump sum payment, of the costs as set out in "Exhibit B". Said payment in full shall constitute full satisfaction of the Developer's improvement obligation for all of the above-described offsite improvements and the Developer shall then have no further obligation with respect to the design and construction of the above-described improvements or for payment thereof.

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4. The monies received by the City shall be placed in a separate fund and accounted for separately and, until such time as the Offsites are completed, shall only be used for the purpose of completing the improvements at a future date determined by the City.

5. The Developer represents and warrants that the Developer is the owner in fee of the above-described real property. As the owner of the above-described real property, the Developer hereby grants to the City, at no cost to the City, a construction easement giving the City the right to use the above-described real property to the extent determined by the City to be necessary to complete the construction of the Offsites. This right of use is a temporary use which is granted to the City, to be used and exercised, during the period of time when the above-described Offsites are being constructed. This easement granting such use shall run with the land and is intended to survive and be in effect beyond the date that Developer pays in full the above-stated amount.

6. This Agreement shall be construed in accordance with the laws of the State of Arizona.

7. If any court of competent jurisdiction declares any portion or portions of this Agreement invalid, the remaining provisions hereof shall remain in full force and effect provided that the purpose and intent of the parties in entering into this Agreement is met.

8. This Agreement may be enforced by either party in a court of law or equity and the prevailing party may be entitled to recover any costs and expenses including reasonable attorneys' fees. Nothing herein shall prevent or prohibit the City from enforcing this Agreement through such other non-judicial means as may be permitted by law, including, but not limited to, the withholding of building permits.

9. Time is of the essence in this Agreement.

10. In this Agreement, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

11. This Agreement shall run with the land and inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns.

12. Any amendment to this Agreement shall be in writing.

**EXHIBIT "A"
LEGAL DESCRIPTION
ARTESIAN RANCH**

A portion of the South half of the Southeast Quarter of Section 13, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Maricopa County brass cap in a hand hole at the Southeast corner of said Section 13, from which an 2" aluminum cap flush at the East quarter of said Section 13 bears North 00 degrees 15 minutes 53 seconds West, a distance of 2650.80 feet;

Thence North 00 degrees 15 minutes 53 seconds West, along the East line of the Southeast Quarter of said Section 13, a distance of 835.05 feet to a point on a line parallel with and 835 feet North of the South line of the Southeast Quarter of said Section 13;

Thence departing said East line, South 89 degrees 07 minutes 41 seconds West, a distance of 33.00 feet to a point 33 feet West of said East line, as disclosed by instrument recorded in Book 384 of Deeds, Page 185 and the POINT OF BEGINNING;

Thence continuing South 89 degrees 07 minutes 41 seconds West, along said parallel line, a distance of 912.05 feet to a point on a line parallel with and 945 feet West of the East line of the Southeast Quarter of said Section 13;

Thence South 00 degrees 15 minutes 53 seconds East, along said parallel line a distance of 802.05 feet to a point 33 feet North of the South line of the Southeast Quarter of said Section 13, said point also being on the North Right-of-Way of Ocotillo Road as recorded in Book 2, Page 26 of Maps, records of Maricopa County, Arizona;

Thence South 89 degrees 07 minutes 41 seconds West, along said line, a distance of 1628.06 feet to the Southeast corner of the Roosevelt Water Conservation District well site conveyed by that certain Deed recorded in Book 210 of Deeds, Page 158, records of Maricopa County, Arizona;

Thence North 00 degrees 14 minutes 31 seconds West, a distance of 50.00 feet;

Thence South 89 degrees 07 minutes 41 seconds West, a distance of 50.00 feet to a point 20 feet East of the West line of the Southeast Quarter of said Section 13, said point also being on the East Right-of-Way line dedicated to the Roosevelt Water Conservation District by Deed recorded in Book 202 of Deeds, Page 368, records of Maricopa County, Arizona;

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Thence North 00 degrees 14 minutes 31 seconds West along said line a distance of 1239.81 feet to the North line of the South half of the Southeast Quarter of said Section 13;

Thence North 89 degrees 04 minutes 17 seconds East along said North line of the South half of the Southeast Quarter of said Section 13, a distance of 2589.63 feet to a point on a line parallel with and 33 feet West of the East line of the Southeast Quarter of said Section 13;

Thence South 00 degrees 15 minutes 53 seconds East along said parallel line, a distance of 490.32 feet to the POINT OF BEGINNING.

Encompassing an area of 2,609,579 sq. ft. 59.908 acres, more or less.

EXHIBIT "B"
COST BREAKDOWN OF DEFERRED IMPROVEMENTS

Improvement costs of the offsites is two hundred sixty eight thousand, two hundred forty one dollars and no cents, (\$268,241.00) which has been determined as follows:

Description	Est. Qty.	Unit	Unit Price	Ext. Price
Sawcut and Remove existing AC Pavement	2568	SY	\$6.00	\$15,408.00
Install 4" AC on 12" ABC	3500	SY	\$35.00	\$122,500.00
Install survey monument	1	EA	\$400.00	\$400.00
Adjust water valve frame and cover	4	EA	\$475.00	\$1,900.00
Relocate hydrant	1	EA	\$5,000.00	\$5,000.00
Install 6" vertical curb & gutter	390	LF	\$18.00	\$7,020.00
Install 6" single curb	700	LF	\$16.00	\$11,200.00
Install 6' sidewalk	2342	SF	\$4.00	\$9,368.00
Install traffic signal interconnect conduit	500	LF	\$9.00	\$4,500.00
Install 12" reclaimed water main	500	LF	\$75.00	\$37,500.00
Install landscaping	5530	SF	\$2.00	\$11,060.00
Install streetlights	2	EA	\$4,000.00	\$8,000.00
Signing and striping	1	LS	\$5,000.00	\$5,000.00
Misc. removals	1	LS	\$5,000.00	\$5,000.00
Traffic control	0	LS	\$25,000.00	\$0.00
Mobilization/demobilization	0	LS	\$15,000.00	\$0.00
			Subtotal	\$243,856.00
			Engineering (10%)	\$24,385.60
			Contract Administration(0%)	\$0.00
			Contingendes (0%)	\$0.00
			Total	\$268,241.60
			Allowance for Inflation (3yrs at 6%)	N/A
			Grand Total	\$268,241.60