



MEMORANDUM Transportation and Development - Council Memo TDE13-011

DATE: APRIL 11, 2013

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *rd*
PAT MCDERMOTT, ASSISTANT CITY MANAGER *PM*
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJ*
DAVID NAKAGAWARA, INTERIM CITY ENGINEER *DN*

FROM: DARYL RACZ, DEVELOPMENT PROJECT ADMINISTRATOR *DR*

SUBJECT: APPROVE OFFSITE LUMP SUM AGREEMENT NO. OA12-003 WITH SMITH'S FOOD AND DRUG CENTERS, INC.

RECOMMENDATION:

Staff recommends Council approve an offsite lump sum agreement with Smith's Food and Drug Centers, Inc. deferring the cost of roadway improvements on 124th Street as a condition of their development and accepting a lump sum payment of \$34,971.

BACKGROUND/DISCUSSION:

As a condition of development, Fry's Fueling Station No. 668 (owned by Smith's Food and Drug Centers, Inc.) located at the northwest corner of Riggs Road and 124th Street, deferred roadway improvements on 124th Street adjacent to their property. The following improvements were deferred in lieu of a lump sum payment of \$34,971 made to the City.

ROADWAY IMPROVEMENTS ON 124TH STREET TO INCLUDE BUT NOT LIMITED TO 1/2 STREET PAVING, CURB AND GUTTER, AND SIDEWALK.

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 \$34,971 have been received from the developer and are being held in an interest bearing account to use for the future construction of 124th Street.

PROPOSED MOTION:

Move that Council approve Offsite Lump Sum Agreement No. OA12-003 with Smith's Food and Drug Centers, Inc., deferring the cost of roadway improvements on 124th Street to meet City requirements for their development and accepting a lump sum payment of \$34,971, and authorize the Mayor to sign the agreement.

Attachments: Agreement No. OA12-003

After Recording, Return
Original Document to:

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

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

AGREEMENT NUMBER: OA12-003

This Agreement, effective as of this _____ day of _____, 20____, is entered into by and between the CITY OF CHANDLER, an Arizona municipal corporation (the "City"), and Smith's Food and Drug Centers, Inc.(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 Transportation and Development 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.**

F. The City's Transportation and Development 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:

Roadway improvements on 124th street to include but not limited to ½ street paving, curb and gutter, and sidewalk

2. The cost for the above referenced improvements is THIRTY FOUR THOUSAND NINE HUNDRED SEVENTY ONE Dollars and No Cents (\$34,971.00). This amount has been determined by the City's Transportation and Development 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.

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.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year first stated above.

SMITH'S FOOD & DRUG CENTERS, INC

By: *[Signature]*

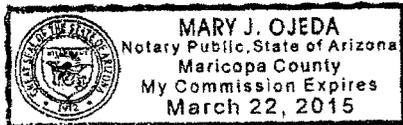
Its: CFO

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 14th day of December, 2012, before me, the undersigned Notary Public, personally appeared Michael Lawrence, CFO, (Title), and being authorized so to do, executed the foregoing Agreement in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires: March 22, 2015



Mary J. Ojeda
Notary Public

CITY OF CHANDLER

MAYOR

ATTEST

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION

That portion of the Southwest quarter of Section 26, Township 2 South, Range 5 East of the Gila and Salt River Basin, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a City of Chandler brass cap in hand hole marking the Southwest corner of said Section 26, from which a City of Chandler brass cap in hand hole marking the West quarter corner of said Section 26 bears North 00 degrees 03 minutes 00 seconds West (basis of bearings) a distance of 2645.14 feet and a City of Chandler brass cap in hand hole marking the South quarter corner of said Section 26 bears North 89 degrees 04 minutes 31 seconds East (measured) North 89 degrees 05 minutes 08 seconds East (record) a distance of 2652.16 feet;

Thence North 89 degrees 04 minutes 31 seconds East, along the South line of said Section 26, a distance of 1326.08 feet to the Southeast corner of the Southwest quarter of the Southwest quarter of said Section 26.

Thence North 00 degrees 01 minutes 30 seconds West, along the East line of the Southwest quarter of the Southwest quarter of said Section 26, a distance of 65.01 feet to the POINT OF BEGINNING;

Thence South 89 degrees 04 minutes 31 seconds West, along the North line of the South 65 feet of said Southwest quarter, a distance of 326.52 feet;

Thence North 44 degrees 31 minutes 19 seconds East, 35.63 feet;

Thence North 00 degrees 01 minute 53 seconds West, 147.52 feet;

Thence North 89 degrees 04 minutes 31 seconds East, 301.54 feet to a point of said East line of the Southwest quarter of the Southwest quarter of said Section 26;

Thence South 00 degrees 01 minute 30 seconds East, along said East line, a distance of 172.52 feet to the POINT OF BEGINNING.

EXHIBIT "B"
COST BREAKDOWN OF DEFERRED IMPROVEMENTS

Improvement costs of the offsites is THIRTY FOUR THOUSAND NINE HUNDRED SEVENTY Dollars and No cents, (\$34,971.00) which has been determined as follows:

Description	Est Qty	Unit	Unit Price	Extended Price
Mobilization / demobilization	1	LS	\$5,000.00	\$5,000.00
Removals	1	LS	\$5,800.00	\$5,800.00
12' Concrete Scupper	1	EA	\$3,000.00	\$3,000.00
Concrete sidewalk ramp	1	EA	\$1,400.00	\$1,400.00
5' Concrete sidewalk	494	SF	\$2.64	\$1,304.16
Vertical Curb and Gutter	98	SF	\$9.35	\$916.30
3' Concrete Valley Gutter and Apron	237	SF	\$4.54	\$1,075.98
Subgrade Prep	535	SY	\$1.46	\$781.10
3" AC / 6" ABC Pavement	535	SY	\$18.44	\$9,865.40
Subtotal				\$29,142.94
Administration			10%	\$2,914.29
Contingency			10%	\$2,914.29
Grand Total				\$34,971.53