



**Chandler • Arizona**  
Where Values Make The Difference



**MEMORANDUM Transportation & Development Department – Memo. No. TDA14-066**

**DATE:** MARCH 13, 2014

**TO:** MAYOR AND COUNCIL

**THRU:** RICH DLUGAS, CITY MANAGER *RD*  
MARSHA REED, ASSISTANT CITY MANAGER *MR*  
R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJZ*  
DANIEL W. COOK, INTERIM CITY ENGINEER *DW*

**FROM:** DARYL RACZ, DEVELOPMENT PROJECT ADMINISTRATOR *DR*

**SUBJECT:** OFFSITE LUMP SUM AGREEMENT WITH DR HORTON, INC., DEFERRING THE CONSTRUCTION OF THE MEDIAN ON CHANDLER HEIGHTS ROAD AS A CONDITION OF THEIR DEVELOPMENT AND ACCEPTING A LUMP SUM PAYMENT OF \$26,882.36

**RECOMMENDATION:** Staff recommends City Council approve an offsite lump sum agreement with DR Horton, Inc., deferring the construction of the median on Chandler Heights Road as a condition of their development and accepting a lump sum payment of \$26,882.36.

**BACKGROUND AND DISCUSSION:** As a condition of development, Southshore Village Subdivision, located at the east/northeast corner of Chandler Heights Road and Arizona Avenue, deferred roadway work on Chandler Heights Road adjacent to their property. Construction of the median on Chandler Heights Road was deferred in lieu of a lump sum payment of \$26,882.36 made to the City. This agreement is intended to cover the cost for the 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.

**FINANCIAL IMPLICATIONS:** Funds in the amount of \$26,882.36 have been received from the developer and are being held in an interest bearing account to use for the future construction of Chandler Heights Road.

**PROPOSED MOTION:** Move City Council approve the offsite lump sum agreement with DR Horton, Inc., deferring the construction of the median on Chandler Heights Road as a condition of their development and accepting a lump sum payment of \$26,882.36, and authorize the Mayor to sign the agreement.

Attachments: Offsite Agreement OA13-002, Location Map

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: OA13-002**

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 DR Horton, Inc., a Delaware Corporation (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:

#### **Construction of the median on Chandler Heights Road**

2. The cost for the above referenced improvements is TWENTY SIX THOUSAND EIGHT HUNDRED EIGHTY TWO Dollars and THIRTY SIX Cents (\$26,882.36). 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.



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A portion of the Southwest quarter of Section 22, 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 brass cap in handhole in the intersection of Chandler Heights Road and Arizona Avenue marking the Southwest corner of said Section 22, from which the brass cap in handhole marking the West quarter corner of said Section 22 bears North 00 degrees 46 minutes 00 seconds East 2625.57 (feet), said line being the West line of the Southwest quarter of said Section 22, and the basis of bearing for this description;

THENCE North 00 degrees 46 minutes 00 seconds East, 1078.35 feet along the West line of said Southwest quarter to the POINT OF BEGINNING;

THENCE continuing along said West line, North 00 degrees 46 minutes 00 seconds East, 1087.00 feet;

THENCE North 89 degrees 04 minutes 45 seconds East, 1327.47 feet to the Westerly right-of-way line of the Union Pacific Railroad;

THENCE South 00 degrees 04 minutes 03 seconds East, 2172.31 feet along said West line to the South line of said Southwest quarter;

THENCE South 89 degrees 25 minutes 08 seconds West, 568.25 feet along said South line;

THENCE North 00 degrees 46 minutes 00 seconds East, 1078.35 feet along a line which is parallel with the West line of said Southwest quarter;

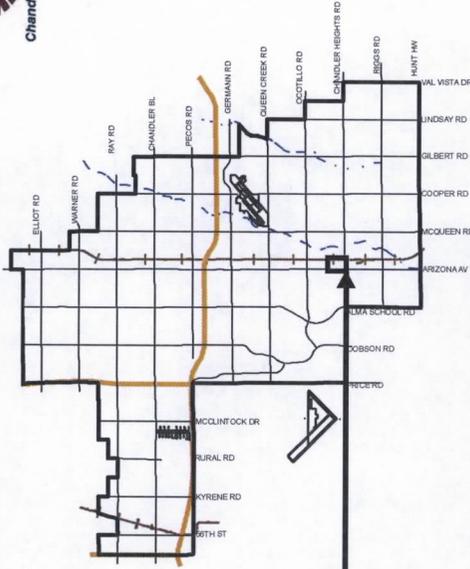
THENCE South 89 degrees 25 minutes 08 seconds West, 790.65 feet along a line which is parallel with the South line of said Southwest quarter to the POINT OF BEGINNING.

**EXHIBIT "B"**  
**COST BREAKDOWN OF DEFERRED IMPROVEMENTS**

Improvement costs of the offsites is TWENTY SIX THOUSAND EIGHT HUNDRED EIGHTY TWO Dollars and THIRTY SIX cents, (\$26,882.36) which has been determined as follows:

Description	Est Qty	Unit	Unit Price	Extended Price
Single Curb	925	LF	\$9.54	\$8,824.50
Landscaping/Pavers	3000	SF	\$2.50	\$7,500.00
Sawcut and Pavement Removal	830	SY	\$2.73	\$2,265.90
Irrigation Booster Pump	1	EA	\$1,458.34	\$1,458.34
1" PVC Pipe - Irrigation purple	450	LF	\$1.40	\$630.00
			Subtotal	\$20,678.74
			Engineering (10%)	\$2,067.88
			Contract Administration (10%)	\$2,067.87
			Contingencies (10%)	\$2,067.87
			Total	\$26,882.36

# SOUTHSHORE VILLAGE E-NEC OF CHANDLER HEIGHTS/ARIZONA AVE OA13-002



MEMO NO. TDA14-066

-  SOUTHSHORE VILLAGE
-  PROJECT LOCATION

