



MEMORANDUM Transportation and Development Department – Memo. No. TDA14-100

DATE: MAY 8, 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, P.E., INTERIM CITY ENGINEER *DWC*

FROM: DARYL RACZ, DEVELOPMENT PROJECT ADMINISTRATOR *DR*

SUBJECT: OFFSITE LUMP SUM AGREEMENT FOR PARCLAND CROSSING APARTMENTS

RECOMMENDATION: Staff recommends City Council approve an offsite lump sum agreement with Alma School Apartments, LLC, deferring a variable speed booster pumping system in conformance with City of Chandler Standards as a condition of their development and accepting a lump sum payment of \$48,873.

BACKGROUND AND DISCUSSION: As a condition of development in 2012, Parcland Crossing Apartments, located at east/northeast corner of Alma School Road and Willis Road, through an agreement with the City (See Attachment No. 2) deferred a variable speed booster pumping system for reclaimed water to their property. The variable speed booster pumping system was deferred in lieu of a lump sum payment of \$48,873 made to the City.

The developer recently informed staff that they planned to sell the property and requested an Offsite Lump Sum Agreement replace the existing Offsite Improvement Deferral Agreement. This agreement is intended to cover the cost for the work. The lump sum agreement will 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 \$48,873, have been received from the developer and are being held in an interest bearing account to use for the future construction of Alma School Road.

PROPOSED MOTION: Move that City Council approve an offsite lump sum agreement with Alma School Apartments, LLC, deferring the variable speed booster pumping system to meet City requirements for their development by accepting the lump sum payment of \$48,873 and authorize the Mayor to sign the agreement.

Attachments:

1. Offsite Agreement OA13-003
2. Offsite Improvement Deferral Agreement
3. TDA14-066 Location Map

After Recording, Return
Original Document to:

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

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

AGREEMENT NUMBER: OA13-003

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 ALMA SCHOOL APARTMENTS, 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 Chapter 48 of the Chandler City 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 Chapter 47 of the Chandler City Code, the City's Director of the Transportation and Development Department 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 Director of Transportation and Development, having previously determined that it was appropriate to defer construction of those specific offsite improvements described in paragraph 1 below, did cause the City to enter into that certain agreement with the Developer known as "Offsite Improvement Deferral Agreement No. 10-003, dated April 24, 2012, and recorded on the same date as Document No. 2012-0341878 with the office of the Maricopa County Recorder (the "Prior Agreement").

G. The property described in Exhibit A is part of a development subdivided and platted as Parland Crossing, according to the plat of record in the office of the Maricopa County Recorder in Book 1093 of Maps, Page 31 (the "Development"). As a condition of the zoning for the Development, the Developer was required to use reclaimed water (effluent) for open space, common areas, and landscape tracts. Because reclaimed water was not available at the time of construction, these areas were allowed to be irrigated with potable water, with conversion to reclaimed water use to occur when the City could make such water available to the Development.

H. System development fees related to the potable water serving the areas were assessed and paid by the Developer, but are repaid to whoever undertakes responsibility for undertaking the actual conversion to reclaimed water. Under a standard deferral agreement, the repayment generally is made to the owner of the land at the time the conversion is completed. However, under a lump sum payment agreement, the repayment is made to the developer entering into and providing the lump sum payment.

I. In lieu of the standard offsite deferral agreement, 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.

J. 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, and the Recitals stated above, 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:

One Variable Speed Booster Pumping Station, complete with check valve and solenoid controlled irrigation master valve, in conformance with City of Chandler requirements.

2. The cost for the above referenced improvements is Forty-Eight Thousand Eight Hundred Seventy-Three Dollars and No Cents (\$48,873.00) as determined pursuant to the Prior Agreement, and is accepted by the Developer.

3. The Developer shall pay to the City in a single, lump sum payment, the amount stated in paragraph 2 above. Said payment in full shall constitute full satisfaction of the Developer's improvement and construction 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. Upon receipt of the monies and upon the City's completion of the reclaimed water conversion, Developer shall be entitled to repayment of the applicable system development fees referred to in Recital H above.

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 nonexclusive, temporary 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. The City will give the Developer (or current owner of the property, as applicable) at least five (5) days prior notice of its exercise of rights under this Section 5. The City agrees not block access to the property and to coordinate the location of the easement with Developer so as not to unreasonably interfere with the current use of the property. Upon the City's completion of the City's work on the property in connection with the Offsites, the City will restore the property, including

without limitation any landscaping, paving or other improvements, to the condition that existed prior to its use. 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. The temporary easement in this Section 5 will automatically expire upon the City's completion of construction of the Offsites without any further action by either party. Notwithstanding the foregoing, after expiration of the easement, upon request from either party, the other party will execute an instrument confirming the expiration of the easement to be recorded in the real property records of Maricopa County.

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.

13. This Agreement is intended to and shall replace the Prior Agreement, referred to in Recital F above. Upon recordation of this Agreement in the office of the Maricopa County Recorder, the Prior Agreement shall terminate and thereafter be void and of no further force and effect.

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

DEVELOPER

ALMA SCHOOL APARTMENTS, LLC
An Arizona limited liability company

By: MT Alma & 202 LLC, an Arizona LLC,
its Managing Member

By: Mark Taylor Inc, an Arizona
corporation, its Manager

By: 
Scott Taylor, President

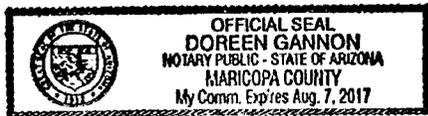
STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 24th day of APRIL, 2014, before me, the undersigned Notary Public, personally appeared Scott Taylor, President of MT Alma & 202, L.L.C. an Arizona limited liability company, which is the Manager of Alma School Apartments, LLC, an Arizona limited liability company, 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: 8-7-17


Notary Public



CITY OF CHANDLER

MAYOR

ATTEST

CITY CLERK

APPROVED AS TO FORM:

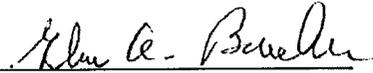

CITY ATTORNEY

EXHIBIT "A"
LEGAL DESCRIPTION

Lot 1, of Parcland Crossing, According to the plat of record in the office of the County Recorder in Book 1093 of Maps, Page 31, records of Maricopa County Arizona.

EXHIBIT "B"
COST BREAKDOWN OF DEFERRED IMPROVEMENTS

Improvement costs of the offsites is FORTY EIGHT THOUSAND EIGHT HUNDRED SEVENTY THREE Dollars and No cents, (\$48,873.00) which has been determined as follows:

Description	Est. Qty.	Unit	Unit Price	Ext. Price
20 HP Centrifugal Pump and Motor			22998	22,998
Installation			6098	6,098
Meter Vault			8500	8,500
Subtotal				\$37,596
Engineering (10%)				3,759
Contract Administration (10%)				3,759
Contingencies (10%)				3,759
Grand Total				\$48,873

After Recording, Return
Original Document to:

10003AlmaSchool-6-1-1--
Marquardt1

CITY CLERK
PO BOX 4008
MAIL STOP 606
CHANDLER, AZ 85244-4008

**OFFSITE IMPROVEMENT DEFERRAL AGREEMENT
CITY OF CHANDLER
AGREEMENT NO. 10-003**

This Agreement entered into this 24 day of April, 2012, by and between the CITY OF CHANDLER, an Arizona municipal corporation (herein "the City"), and Alma School Apartments, LLC (herein "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 City Code, the Developer is permitted to meet the Developer's 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. The Developer acknowledges that the Developer's continuing obligation to plan and construct (including installing) all required offsite improvements is only satisfied when such offsite improvements have been properly constructed by the Developer or a third party, but desires to defer his obligation to construct required offsite improvements so as to avoid the hardship of meeting the obligation at the present time.

E. Under Section 47-11 of the Chandler City Code, the City's Public Works Director (herein the "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.

F. The Director has determined that it is appropriate to defer construction of the required offsite improvements adjacent or related to the following-described property:

SEE EXHIBIT "A"

COVENANTS :

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

1. The Developer shall construct the following required offsite improvements adjacent or related to the above-described property (herein the "offsites"):

One Variable Speed Booster Pumping System, complete with check valve and solenoid controlled irrigation master valve, in conformance with City of Chandler requirements.

2. The Developer's obligation to construct the offsites is deferred for a period of three (3) years from the effective date of this Agreement (herein the "deferral period"). The Developer's obligation to prepare, submit and obtain approval of engineering plans and specifications for the offsites is not deferred by this Agreement.

3. During the deferral period, the Director may give to the Developer written notice to proceed with the construction of the offsites, and the Developer shall start construction of such offsites within NINETY (90) calendar days from the date of such notice. If a separate written notice to proceed is not given during the deferral period, the Developer's obligation to begin construction of the offsites shall become immediately due and construction shall begin thirty (30) days before the last day of the deferral period. This Agreement shall constitute the notice to proceed by that date. The Developer shall conclude such construction within a reasonable time, but in no event more than ONE HUNDRED EIGHTY (180) calendar days from the beginning of construction, in accordance with the plans and specifications previously submitted to and approved by the City.

4. The Developer shall provide to the City one or more performance bonds, letters of credit, cash or other assurance approved by the Chandler City Attorney, having a total aggregate amount of Forty eight thousand eight hundred seventy three Dollars and No Cents (\$ 48,873.00) (herein the "assurance") to assure the construction of all offsites required under the terms of this Agreement and the Chandler City Code. The amount of the assurance, as fixed by the Director, is based on an estimate of the cost of construction of the offsites, but the Developer's actual obligation

for construction of the offsites may exceed the amount of the assurance. The form of the assurance shall be subject to the approval of the Chandler City Attorney.

5. Said assurance shall remain in full force and effect until such time as all required offsites are constructed and accepted by the City. If the Developer fails to begin or to complete construction of the offsites by the dates required under this Agreement, City may pursue any remedy permitted by law or equity, as well as any or all of the following remedies: (a) call upon the surety issuing the assurance to construct or complete construction of the offsite, or provide funds sufficient to pay the costs of construction or completion of construction of the offsites; (b) construct or complete construction of the offsites and proceed against the assurance for payment of the costs thereof; (c) deny the issuance of any further building permits or any final inspection approval or certificate of occupancy in connection with the above-described real property.

6. Any notice to proceed shall be sufficiently given and shall be deemed to have been received by the Developer 48-hours after deposit in the United States mail in registered or certified form with postage fully prepaid and addressed to the Developer at:

Alma School Apartments, LLC
c/o Mark-Taylor, Inc.
6623 N. Scottsdale Road
Scottsdale, A Z 8 5 2 5 0

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

8. 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.

9. 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.

10. Time is of the essence of this Agreement.

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

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 1, of Parcland Crossing, according to the plat of record in the office of the County Recorder in Book 1093 of Maps, Page 31, records of Maricopa County, Arizona.

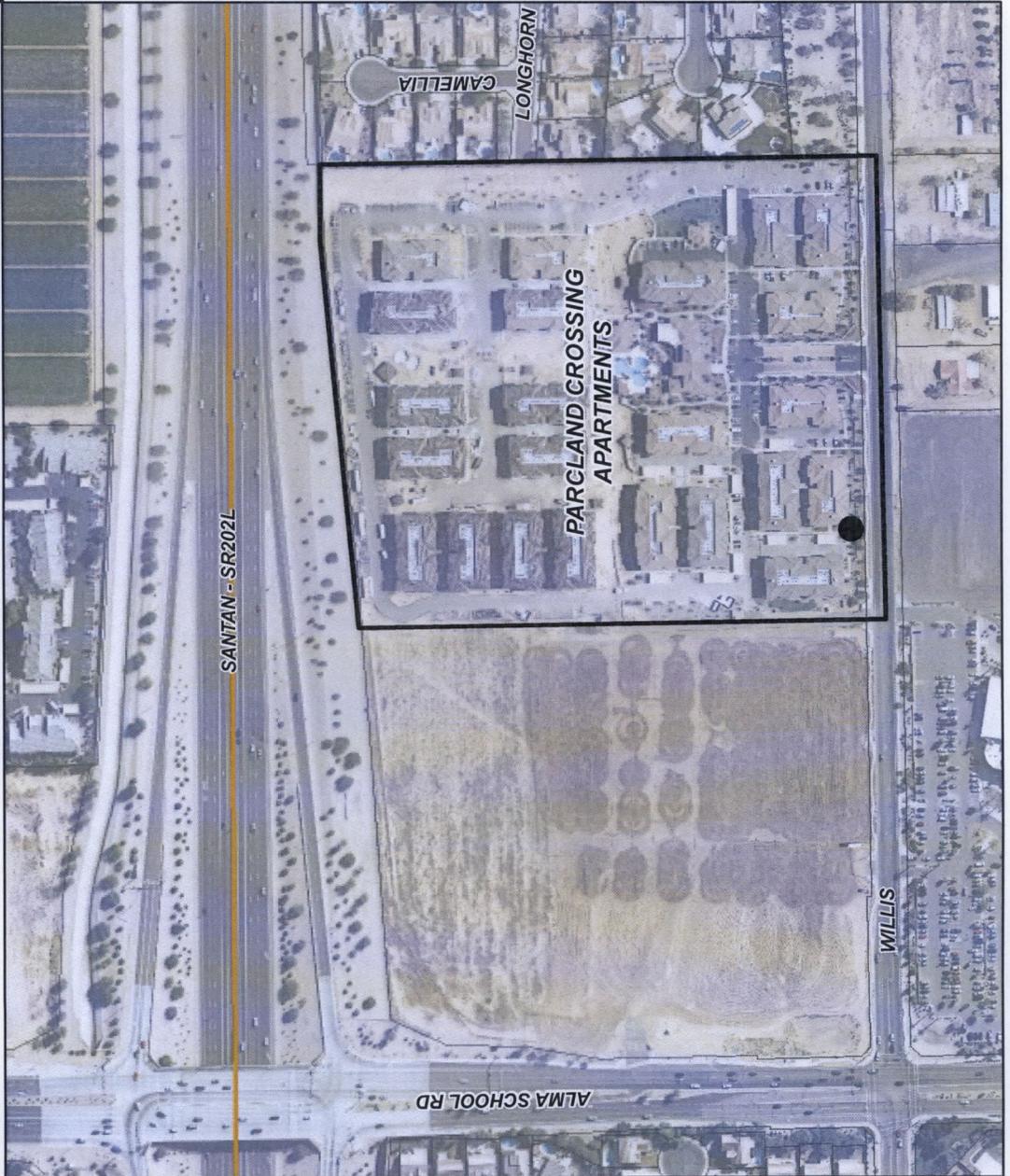
EXHIBIT "B"
COST BREAKDOWN FOR DEFERRED IMPROVEMENTS

Improvement costs of the offsite improvements is forty eight thousand eight hundred seventy three Dollars and no cents, which has been determined as follows:

Description	Est. Qty.	Unit	Unit Price	Ext. Price
20 HP Centrifugal Pump and Motor			22998	22,998
Installation			6098	6,098
Meter Vault			8500	8,500
			Subtotal	\$37,596
			Engineering (10%)	3,759
			Contract Administration (10%)	3,759
			Contingencies (10%)	3,759
			Grand Total	\$48,873



BOOSTER PUMP STATION AT PARCLAND CROSSING APARTMENTS PROJECT OA13-003



MEMO NO. TDA14-100

- PARCLAND CROSSING APARTMENTS
- PROJECT LOCATION

