

#28
JAN 14 2016



MEMORANDUM Transportation & Development - Memo No. TDA16-032

DATE: JANUARY 14, 2016

TO: MAYOR AND COUNCIL

THRU: MARSHA REED, ACTING CITY MANAGER *MR*
 NACHIE MARQUEZ, ASSISTANT CITY MANAGER *NM*
 R.J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJZ*
 DANIEL W. COOK, CITY ENGINEER *DW*

FROM: DARYL RACZ, DEVELOPMENT PROJECT ADMINISTRATOR *DR*

SUBJECT: APPROVAL OF CITY PARTICIPATION AGREEMENT CP15-001 WITH LGE CORPORATION FOR THE DESIGN AND REALIGNMENT OF THE ROOSEVELT WATER CONSERVATION DISTRICT FACILITY ON STEARMAN ROAD, IN EXCESS OF THEIR OFFSITE IMPROVEMENT OBLIGATION, AT A COST TO THE CITY IN AN AMOUNT NOT TO EXCEED \$69,330.00

RECOMMENDATION: Staff recommends Council approve City Participation Agreement CP15-001 with LGE Corporation for the design and realignment of the Roosevelt Water Conservation District facility on Stearman Road, in excess of their offsite improvement obligation, at a cost to the City in an amount not to exceed \$69,330.00, and authorize the Mayor to sign the agreement.

BACKGROUND AND DISCUSSION: The Bellman offsite/industrial project is being constructed by LGE Corporation (LGE) within the Chandler Airport Business Park at the southeast corner of Germann and Stearman roads. Along the north side of this project there is an existing Roosevelt Water Conservation District (RWCD) irrigation line that crosses Stearman Road. That section of Stearman Road was reconstructed by the City of Chandler over 10 years ago, as part of the Germann Road reconstruction. At that time the RWCD crossing of Stearman Road was designed with the best information available from RWCD based on the then planned development in that area. When the Bellman project was in the early design stages in 2014, it was determined by RWCD that the pipe that crosses Stearman Road was installed by the City at an elevation that now has a negative impact on the RWCD irrigation system. RWCD required the City to reconstruct the crossing at the revised elevation and a slightly different alignment. This reconstruction was determined to be the City's responsibility to correct.

Because reconstruction of the RWCD irrigation line across Stearman Road by the City would have likely delayed the Bellman project, LGE Corporation agreed to do the work as part of their project subject to a reimbursement from the City. The cost of design and reconstruction of the portion of the RWCD irrigation system is \$69,330.00. In order to reimburse LGE Corporation the City needs to enter into a City Participation Agreement with LGE Corporation.

FINACIAL IMPLICATION:

Costs:	Not to exceed \$69,330.00
Savings:	N/A
Long Term Costs:	Normal infrastructure operation and maintenance
Funding Source:	401.3310.6517.6ST303

PROPOSED MOTION: Move City Council approve City Participation Agreement CP15-001 with LGE Corporation for the design and realignment of the Roosevelt Water Conservation District facility on Stearman Road, in excess of their offsite improvement obligation, at a cost to the City in an amount not to exceed \$69,330.00, and authorize the Mayor to sign the agreement.

Attachments: City Participation Agreement CP15-001
Location Map

**AGREEMENT FOR CITY PARTICIPATION IN
OFFSITE CONSTRUCTION COSTS
AGREEMENT NUMBER CP15-001**

THIS AGREEMENT, made and entered into this ___ day of _____, 201_, by and between the CITY OF CHANDLER, a municipal corporation of the State of Arizona, hereinafter designated as "City", and LGE CORPORATION referred to herein as "Developer".

RECITALS:

- A. City desires additional offsite improvements as required in connection with development of the following described property:

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

- B. A Benefit Study has been performed which determined the Developer's obligation to provide offsite improvements.
- C. The value of the improvements constructed by Developer exceeds the Developer's offsite improvement obligation.
- D. City funds have been budgeted and are available to pay that part of the cost of construction of these improvements which exceed the Developer's obligation.
- E. Existing Development will preclude reimbursement of these costs from other property owners.
- F. Developer desires to enter into an agreement with City for City participation for reimbursement of costs incurred by Developer for construction of offsite improvements bordering existing development that does not belong to Developer, whose value exceeds the Developer's offsite improvement obligation.
- G. Chandler City Code Section 47-11.6 and 47-11.7 authorize the City Council to enter into an agreement providing for City participation for reimbursement to Developer from City funds when requested by developers.

NOW, THEREFORE, it is agreed as follows:

1. Developer agrees to construct improvements as required by the Chandler City Code. Construction shall be in accordance with plans approved by the City Engineer.
2. Developer agrees to pay all construction costs including, but not limited to, right-of-way, easement, legal, engineering, and energization, which are required to complete the work. The improvements eligible for cost reimbursement are described as follows: The realignment of Roosevelt Water Conservation District (RWCD) facility on Stearman Road, as more specifically described on Exhibit "B" attached hereto and incorporated herein.
3. City shall acquire ownership of said improvements, including those eligible for reimbursement, when completed, approved and accepted by written notification to Developer from the City Engineer. Following acceptance, all costs for maintenance and power shall become the responsibility of the City.

4. Should Developer be adjudged bankrupt or make an assignment for benefit of creditors prior to the completion of the construction of the work to be performed under the terms of this Agreement, all rights under the reimbursement provisions hereof, if any, shall be null and void and without force or effect, and facilities constructed prior to bankruptcy become the property of the City in fee simple, free and clear of any and all encumbrances, claims or liens whatsoever of Developer.
5. City Participation. The City's participation in the Project shall be limited to the actual cost of the items included in the Project, up to an amount not to exceed SIXTY NINE THOUSAND THREE HUNDRED THIRTY DOLLARS AND NO CENTS (\$69,330.00), and the unit costs for those improvements for which the City is providing reimbursement shall not exceed the unit cost for the entire offsite improvements.
6. Progress Payment. The City shall make payments to the Developer for portions of the Project completed by the contractor and accepted by the City. Progress payments for completed work shall be submitted to the City Engineer. Payment requests shall be signed by the contractor and the engineer for the Developer and accompanied by such supporting documentation as may reasonably be required, including, but not limited to, documentation showing Developer's unit costs for all of Developer's offsite improvements.
7. Inspection. Offsite inspection of the construction will be performed by City staff. Any additional inspection required for the construction shall be performed by the Developer's engineer at the Developer's sole expense.
8. As-Built Drawings. As-built drawings shall be prepared and certified by Developer's engineer prior to final acceptance of the Project by the City.
9. Warranty Bond. The Developer, at his expense, shall provide the City with a warranty bond to guarantee, warrant and/or maintain said improvements for a period of one year after final acceptance of the Project by the City.
10. Enforcement. The City shall be entitled to recover all costs, expenses and fees, including reasonable attorney's fees, incurred by it should litigation be instituted to enforce any term or provision of this Agreement or any portion of the amount payable under this Agreement.
11. Governing Law. This Agreement shall be governed by the laws of the State of Arizona and may be executed in counterparts, each of which shall constitute the original. There are no understandings or agreements except as expressly stated herein.
12. Waiver. No waiver by either party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained.
13. Severability. In the event that any phrase, clause, sentence, paragraph, section, article or portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law, except if the remaining portions of the Agreement do not provide one or both of the parties with the essential consideration for entering into this Agreement.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunder duly affixed and attested by its City Clerk, and the Developer has signed the same, on or as of the day and year first above written.

CITY OF CHANDLER, a municipal corporation of the State of Arizona

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney GAB

STATE OF ARIZONA)
)ss
County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____, 200_ by _____, Mayor of the City of Chandler, who acknowledges that he signed the foregoing instrument on behalf of the City of Chandler.

Notary Public

My Commission Expires:

LGE Corporation

By: _____
[Signature]

Its: VICE President, Construction/CS

STATE OF ARIZONA)
)ss
County of Maricopa)

On this 23rd day of September, 2005, before me the undersigned Notary Public, personally appeared M. Frank Pettit, of LGE Corporation, and that he/she being authorized so to do, executed the foregoing Agreement in the capacity therein stated and for the purposes therein contained.

Kelly Gray

Notary Public

My Commission Expires: 8/14/18

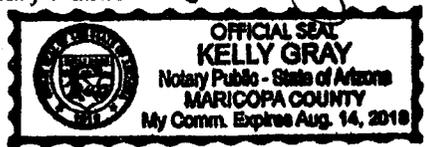


EXHIBIT "A"
LEGAL DESCRIPTION

Lots 8A and 8B, Mammoth Chandler II, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in book 1008 of maps, page 4; except oil, gas, and other hydrocarbons and materials as conveyed in deed recorded in docket 15293, in and to that portion lying easterly of the old right of way line of Stearman Drive.

EXHIBIT "B"

TOTAL COST FOR REALIGNMENT OF RWCD FACILITY ACROSS STEARMAN ROAD

Description	Quantity	Unit	Cost	Total
Remove existing pipe, new 30" pipe, Pavement R&R	1	LS	\$44,276.00	\$44,276.00
Microsealing & Striping	1	LS	\$7,248.00	\$7,248.00
Re-align existing waterline to accommodate irrigation line	1	LS	\$3,575.50	\$3,575.00
New sidewalk, curb and gutter	1	LS	\$1,059.30	\$1,059.00
Remove abandoned SWG pipe	1	LS	\$13,171.56	\$13,172.00
			Total	\$69,330.00