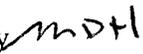
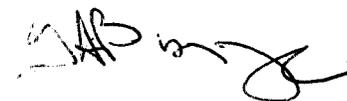


#15

MAR 22 2007

MEMO TO: Mayor and City Council

THRU: Michael D. House, City Attorney 

FROM: Glenn A. Brockman, Assistant City Attorney 

SUBJECT: Resolution No. 4051 determining that acquisition of a public sewer easement along the east and north lines of that certain private property generally identified as tax parcel 302-23-011S, located near the northeast corner of Pecos Road and Dobson Road, is a matter of public necessity and needed for the extension of the public sewer system to serve the affected site and additional land north of the affected site; approving an agreement to fund acquisition of said easement; and authorizing condemnation proceedings to acquire said easement and to obtain immediate possession of the easement area.

DATE: March 16, 2007

RECOMMENDATION: Staff recommends approval of Resolution No. 4051.

BACKGROUND/DISCUSSION: SEVG ASSOCIATED PROPERTIES, LLC (“Developer”) desires to commence construction of a medical/office building generally located on Pecos Road, east of Dobson Road. As a condition of receiving necessary permits, Developer must provide for the extension of the public sewer line from a point on Pecos Road east of Dobson Road, and without cutting into Dobson Road, which was already improved within the last two years. In order to meet this requirement, a public sewer easement must be obtained from undeveloped property that surround the northeast corner of Pecos Road and Dobson Road. Developer has been unable to purchase the easement from the owner of the affected property. Developer is willing to fund the costs incurred if the City acquires the land needed for the public sewer easement. This public sewer easement needs to be acquired as soon as possible and immediate possession of the property obtained so that the installation of the public sewer line can proceed in a prompt and reasonable manner and as part of the construction pending on the Developer’s property. The City is authorized by law to acquire through condemnation such real property as needed for utility purposes, including public sewer service.

This resolution authorizes the City to proceed with acquisition of the public sewer easement through means of condemnation. Before any such action is filed, the City will tender a written offer accompanied by an appraisal. If accepted, the matter will be placed in escrow. If not, then an action will be filed.

This resolution also approves a written agreement for full funding of the cost of the acquisition. The agreement is a prerequisite to the City proceeding with the acquisition since it provides the source of funds needed for the acquisition of the public sewer easement. The funding is necessary for acquisition/condemnation of the public sewer easement, which is needed so that the public sewer line can be extended within the next six months. Notwithstanding the funding source, the City will be the easement holder and the sewer line will be maintained as a public facility of the City.

FINANCIAL IMPLICATIONS: None

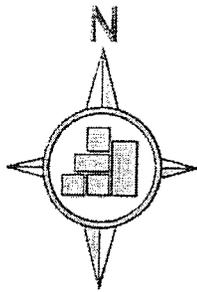
PROPOSED MOTION: Move to adopt Resolution No. 4051 determining that acquisition of a public sewer easement along the east and north lines of that certain private property generally identified as tax parcel 302-23-011S, located near the northeast corner of Pecos Road and Dobson Road, is a matter of public necessity and needed for the extension of the public sewer system to serve the affected site and additional land north of the affected site; approving an agreement to fund acquisition of said easement; and authorizing condemnation proceedings to acquire said easement and to obtain immediate possession of the easement area.

GAB/

Attachments: Vicinity Map

Resolution 4051

Copy of proposed form of funding agreement



PARCEL NO.
303-23-011T



DOBSON ROAD

NW. CORNER OF S. 1/2,
SW. 1/4, SW. 1/4, SW. 1/4

POINT OF
BEGINNING

N89°26'32"E 546.00'

S68°36'17"E
96.71'

12'

S00°34'10"E
230.92'

PARCEL NO.
303-23-011R

PARCEL NO.
303-23-011S

6'
12'
6'

N00°22'07"W 332.28'

65'

PECOS ROAD

65'

N89°25'24"E

S 1/2, SW. 1/4, SW. 1/4, SW. 1/4, SEC. 32, T. 1 S., R. 5 E., G. & S.R.B. & M.

SCALE: 1" = 100'

SHEET: 1 OF 1



**MORRISON
MAIERLE, INC.**

an Arizona Corporation

DRAWING: SEWER-EASMT

PROJECT: 8498-001

DRAWN: ML

CHECKED: ML

EXHIBIT

SANITARY SEWER EASEMENT

CHANDLER, ARIZONA

RESOLUTION NO. 4051

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, DETERMINING THAT ACQUISITION OF A PUBLIC SEWER EASEMENT ALONG THE EAST AND NORTH LINES OF THAT CERTAIN PRIVATE PROPERTY GENERALLY IDENTIFIED AS TAX PARCEL 303-23-011S, LOCATED NEAR THE NORTHEAST CORNER OF PECOS ROAD AND DOBSON ROAD, IS A MATTER OF PUBLIC NECESSITY AND NEEDED FOR THE EXTENSION OF THE PUBLIC SEWER SYSTEM TO SERVE THE AFFECTED SITE AND ADDITIONAL LAND NORTH OF THE AFFECTED SITE; APPROVING AN AGREEMENT TO FUND ACQUISITION OF SAID EASEMENT; AND AUTHORIZING CONDEMNATION PROCEEDINGS TO ACQUIRE SAID EASEMENT AND TO OBTAIN IMMEDIATE POSSESSION OF THE EASEMENT AREA.

WHEREAS, SEVG ASSOCIATED PROPERTIES, LLC (“Developer”) desires to commence construction of a medical-office building located generally on Pecos Road, east of Dobson Road, and, as a condition of receiving necessary permits, must provide for the extension of the public sewer line from a point on Pecos Road east of Dobson Road and without cutting into Dobson Road, which was already improved within the last two years; and

WHEREAS, in order to meet this requirement, a public sewer easement must be obtained from undeveloped property that surrounds the northeast corner of Pecos Road and Dobson Road, and which is identified as Tax Parcel No. 303-23-011S; and

WHEREAS, Developer has been unable to purchase the easement from the owner of the affected property despite a substantial effort to negotiate the purchase thereof; and

WHEREAS, the sewer easement is located in a manner which will be most compatible with the greatest public good and the least private injury; and

WHEREAS, Developer is agreeable to funding the cost incurred by the City in acquiring the land needed for the public sewer easement; and

WHEREAS, the easement area needs to be acquired as soon as possible and immediate possession thereof obtained so that the installation of the public sewer line can proceed in a prompt and reasonable manner and as part of the construction pending on the Developer’s property; and

WHEREAS, the City is authorized by law to acquire through condemnation such real property as is needed for utility purposes, including public sewer service;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Maricopa County, Arizona, as follows:

Section 1. It is hereby determined that the acquisition of the real property described in Exhibit "A", attached hereto and incorporated herein by reference, for a public sewer easement, and the obtaining of immediate possession of such real property, is a matter of public necessity, is for a public and necessary purpose, and is in the best interest of the citizens of the City of Chandler.

Section 2. The City of Chandler is hereby authorized to enter into an agreement with the Developer for the funding of the acquisition of the easement, which agreement shall be substantially in the form accompanying this resolution, subject to final approval as to form by the Chandler City Attorney.

Section 3. The City Attorney of the City of Chandler is hereby authorized and directed to commence condemnation (eminent domain) proceedings as needed to acquire, in the name of the City of Chandler, the sewer easement within and upon the real property described in attached Exhibit "A", and to secure immediate possession of such real property, for the public purpose of extending public sewer service, and is further directed to do and to perform all acts necessary in furtherance of the acquisition of the easement and immediate possession of said real property.

Section 4. The Mayor of the City of Chandler is authorized to execute the aforementioned funding agreement and to execute such other documents as may be necessary to secure the easement interest in the real property described in attached Exhibit "A" for the purpose of extending public sewer service.

PASSED AND ADOPTED by the City Council of the City of Chandler, Maricopa County, Arizona, this ___ day of _____, 2006.

ATTEST:

CITY CLERK

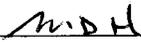
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4051 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ___ day of _____, 2007, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

SANITARY SEWER EASEMENT:

A 12.00-foot wide strip of land through a portion of the South Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 32, Township 1 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying 6.00 feet on each side of the following described centerline:

Commencing at the Southwest corner of said Section 32; **thence** North $00^{\circ}22'07''$ West, along the West line of said Section 32, a distance of 332.28 feet to the Northwest corner of said South Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter; **thence** North $89^{\circ}26'32''$ East, along the North line of said South Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter, 546.00 feet to the **POINT OF BEGINNING**;

thence, South $68^{\circ}36'17''$ East, 96.71 feet; **thence** South $00^{\circ}34'10''$ East, 230.92 feet to the North right-of-way line of Pecos Road being 65.00 feet North, as measured at a right angle, from the South line of said Section 32 and the terminus of said centerline and said strip of land.

The margins of said strip of land to be lengthened or shortened as to form a continuous strip across the grantor's property.



**AGREEMENT
(Public Sewer Facilities)**

This Agreement is made and entered into this _____ day of _____, 20____, by and between the CITY OF CHANDLER, an Arizona municipal corporation ("City") and _____, a(n) _____ ("Developer"), whose business address is _____, _____, _____.

RECITALS

- A. Developer is the owner of that certain real property located at _____ (the "Developer's Property"), upon which Developer is constructing a _____ development known as _____ (the "Project").
- B. As a condition of the development approvals given by City for the Project, Developer is required to dedicate an easement for public sewer facilities ("sewer easement"), which is necessary to extend sewer service to the Developer's Property, and to construct the sewer facilities as part of the Project.
- C. A portion of the sewer easement will run through private land not owned by Developer, but by a third party landowner (the "landowner"), who has not been willing to reach any agreement with Developer to grant the sewer easement to City.
- D. City has determined that the providing of public sewer service to the Developer's Property is a public use; that the acquisition of the sewer easement through the property of the landowner is a matter of public necessity; and that City is willing to exercise its power of eminent domain to acquire such sewer easement provided that Developer pays the full cost and expense of the acquisition.
- E. Developer is willing to pay the full cost associated with the acquisition of the sewer easement in order to meet its responsibility for dedicating and constructing the public sewer facilities needed for the Developer's Property.

NOW, THEREFORE, it is mutually agreed between the parties as follows:

1. City shall undertake condemnation proceedings to acquire the sewer easement provided that Developer pays the full cost of the property acquisition. City shall use its in-house legal staff to prosecute any such condemnation proceeding and to otherwise acquire the sewer easement. Developer may request in writing that City use private legal counsel, rather than in-house legal staff, in connection with the

condemnation proceedings and acquisition of the sewer easement, provided that Developer therein acknowledges and agrees that it will pay all fees and costs charged for such private legal services. In such event, City shall endeavor to retain private legal counsel mutually acceptable to both City and Developer, but if the parties cannot agree on private legal counsel acceptable to both parties, then City shall retain private legal counsel of its choice. Prior to such private legal counsel being retained by City, Developer shall provide assurance to City in a form and amount satisfactory to the Chandler City Attorney to assure that all costs and attorney's fees incurred by City for the services of said private legal counsel are reimbursed by Developer.

2. Developer agrees to pay the full cost of City's acquisition of the sewer easement, which costs may include, without limitation, the following:

- a. Cost of written appraisal report ("Appraisal") in form or format acceptable to City to be obtained from an appraiser of City's choice.
- b. Cost of condemnation/litigation guarantee title report, with vesting deed and all underlying documents of record, and, at City's option, title insurance, which will be obtained from a title company acceptable to City.
- c. Any litigation costs, including any filing fees, service charges, publication costs, witness fees, and recording fees that may be incurred. Please note that City is normally not required to pay a filing fee and the use of expert witness testimony may not be required in the event a default is taken.
- d. The money damages assessed against City for the acquisition of the sewer easement, including any taxes required to be paid in connection therewith.
- e. Any attorneys' fees that may be awarded against City as part of the condemnation. Normally, attorneys' fees are not awarded in a condemnation action. Also, since the acquisition of the easement property will be for City and within the scope of the City Attorney's general responsibilities, there will be no charge for the time spent by the City Attorney's office in connection with the condemnation action.
- f. Costs associated with any out of court settlement, whether such settlement is reached prior to or during the pendency of the condemnation proceeding. This includes the amount to be paid the landowner as part of any settlement as well as related escrow, insurance and recording costs.

3. Developer shall pay the sum of \$7,500.00 as an advance against Developer's total monetary obligation under this Agreement. Payment will be kept in a separate account to be used solely for payment of expenses incurred in connection with

the condemnation. Upon receipt of the payment, and subject to Paragraph 8 below, City will order the title report and Appraisal. Following receipt of the title report and Appraisal, City will tender a written purchase offer to the landowner at an amount at least equal to the value stated in the Appraisal, a copy of which will also be delivered to the landowner with the purchase offer. The landowner will be given no less than twenty (20) days to accept the offer or otherwise negotiate the sale of the easement interest.

4. Upon filing the condemnation action, City will request payment from Developer of an amount equal to the value set forth in the Appraisal, plus \$7,500.00. Payment of this amount shall be made by Developer by means of a certified check no later than ten (10) days prior to the scheduled hearing date for the Order of Immediate Possession, which hearing date will be requested when the condemnation action is filed.

a. It is acknowledged by the parties that the amounts stated above are based on City estimates made prior to any appraisal of the easement property being obtained and may be more or less than the value of the easement property as appraised, ultimately determined in the action, or ultimately reached in settlement.

b. If the actual expense of the litigation, including damages, turns out to be greater than the amount of the estimate, Developer shall pay the difference at or before City obtains the Final Order of Condemnation or, if settlement is reached, at the time of closing of escrow in connection with the settlement.

c. If the actual expense of the litigation, including damages, turns out to be less than the amount of the estimate, City will refund Developer within fifteen (15) days from the date of the Final Order of Condemnation or, if settlement is reached, fifteen (15) days from the escrow closing date.

5. City will periodically notify Developer of the status of the condemnation action.

6. Time is of the essence in this Agreement.

7. Upon legal possession of the easement property being obtained, Developer shall undertake and complete the construction of the public sewer facilities.

8. This Agreement is also expressly made subject to the Chandler City Council authorizing condemnation of the easement property. City will not arrange for a title report and/or appraisal until such authorization has been given. In the event no such authorization is given, this Agreement shall be deemed rescinded, any funds that may have been paid by Developer shall be returned and Developer shall have no further obligation to acquire the easement.

9. This Agreement may be executed in any number of counterparts, whether by original, copy or facsimile signature and each counterpart so executed shall, taken together, constitute one and the same original Agreement. Each person executing this Agreement personally represents and warrants that he or she has the full power and authority to bind the party being signed for to the terms of this Agreement.

CITY OF CHANDLER, an Arizona
municipal corporation

_____, a(n) _____

By: _____

By: _____

Its: _____

Its: _____

APPROVED AS TO FORM:

City Attorney