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JUL 26 2007



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Where Values Make The Difference

MEMORANDUM

Public Works Engineering - Council Memo ENG08-002

DATE: July 26, 2007

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER *WMP*
DANIEL W. COOK, ACTING PUBLIC WORKS DIRECTOR *DC*
SHEINA HUGHES, ACTING ASSISTANT PUBLIC WORKS
DIRECTOR/CITY ENGINEER *SH*

FROM: CHARLES W. SMITH, ENGINEER *CWS*

SUBJECT: Approval of Offsite Improvement and Construction Easement Agreement OA07-003 with SWC Queen Creek & Gilbert LLC, deferring full medians in Queen Creek Road and Gilbert Road across the frontage of the Carmel Village Plaza development and accepting a lump sum payment of \$125,294.

RECOMMENDATION:

Staff recommends that Council approve Offsite Improvement and Construction Easement Agreement OA07-003 with SWC Queen Creek & Gilbert LLC, deferring full medians in Queen Creek Road and Gilbert Road across the frontage of the Carmel Village Plaza development and accepting a lump sum payment of \$125,294.

BACKGROUND AND DISCUSSION:

A commercial development, to be known as Carmel Village Plaza, is being developed on the southwest corner of Gilbert and Queen Creek Roads. The developer is SWC Queen Creek & Gilbert LLC. As part of this project, the developer has an obligation for construction of full medians in both Queen Creek and Gilbert Roads across the frontage of the property.

On the north side of Queen Creek Road is an irrigation ditch that would interfere with construction of the median in that road. In addition, the lack of sufficient right-of-way in Gilbert Road north of the Queen Creek Road intersection would prevent a smooth traffic flow transition if a median were installed in Gilbert Road south of the intersection. As a result, rather than require completion of the work now, an agreement has been prepared that will allow for deferral of this construction to sometime in the future when conditions are more favorable for completing the installations.

Under the proposed agreement, the developer will make a lump sum payment to cover his obligation for construction of the full median, and in exchange for this lump sum payment, the developer will be relieved of any further responsibility for this improvement.

The estimated total cost for completing this work is \$125, 294. Under this agreement, that is the amount of the lump sum payment to be made by the developer

FINANCIAL IMPLICATIONS:

A lump sum payment, in the amount of \$125,294, will be received from the developer and held in an interest-bearing account until the time when this improvement is installed. At that time, these funds plus interest will be applied to the cost of the work.

PROPOSED MOTION:

Move that Council approve Offsite Improvement and Construction Easement Agreement OA07-003 with SWC Queen Creek & Gilbert LLC, deferring full medians in Queen Creek Road and Gilbert Road across the frontage of the Carmel Village Plaza development and accepting a lump sum payment of \$125,294, and authorize the Mayor to sign the Agreement.

Attachments: Agreement No. OA07-003, 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)
OA07-003**

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 SWC Queen Creek & Gilbert 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 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 the Chandler City Code, the City's Public Works 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 Public Works Director has determined that it is appropriate to defer construction of required offsite improvements adjacent or related to the above-described real property for a fixed period of time.

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 provided that the Developer also covenants and agrees to grant to the 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:

A full median, including landscape, in Queen Creek Road across the frontage of the property and in Gilbert Road beginning at Queen Creek Road and terminating at a point 566 feet south of the monument line in Queen Creek Road.

2. The cost for the above referenced improvements is One Hundred Twenty Five Thousand, Two Hundred Ninety Four Dollars and No Cents (\$125,294.00). This amount has been determined by the City's Public Works 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, 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 covenants and agrees to grant to the City, at no cost to 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 to be made available to the City, at the request of the City, during the period of time that the Offsites are constructed. This covenant to grant 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.

SWC QUEEN CREEK & GILBERT LLC,
An Arizona limited liability company

BY: GDC Equities LLC,
An Arizona limited liability company,
Its: Managing Member

By: [Signature]
Its: Manager

STATE OF ARIZONA)
) ss
County of Maricopa)

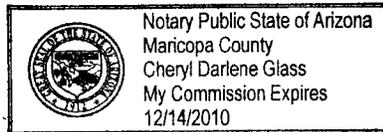
On this 22 day of June, 2007, before me, the undersigned Notary Public, personally appeared Jerald S. Gerard, Manager (Title) and being authorized so to do, executed the foregoing Agreement in the capacity therein stated and for the purposes therein contained.

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

Cheryl Darlene Glass
Notary Public

My Commission Expires:

12/14/2010



CITY OF CHANDLER

By: _____
MAYOR

ATTEST

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY YJS

EXHIBIT "A"
LEGAL DESCRIPTION
CARMEL VILLAGE PLAZA

Lot 7 of the Final Plat for Carmel Village Plaza, Book 884 Page 35
Document #2006-1581609

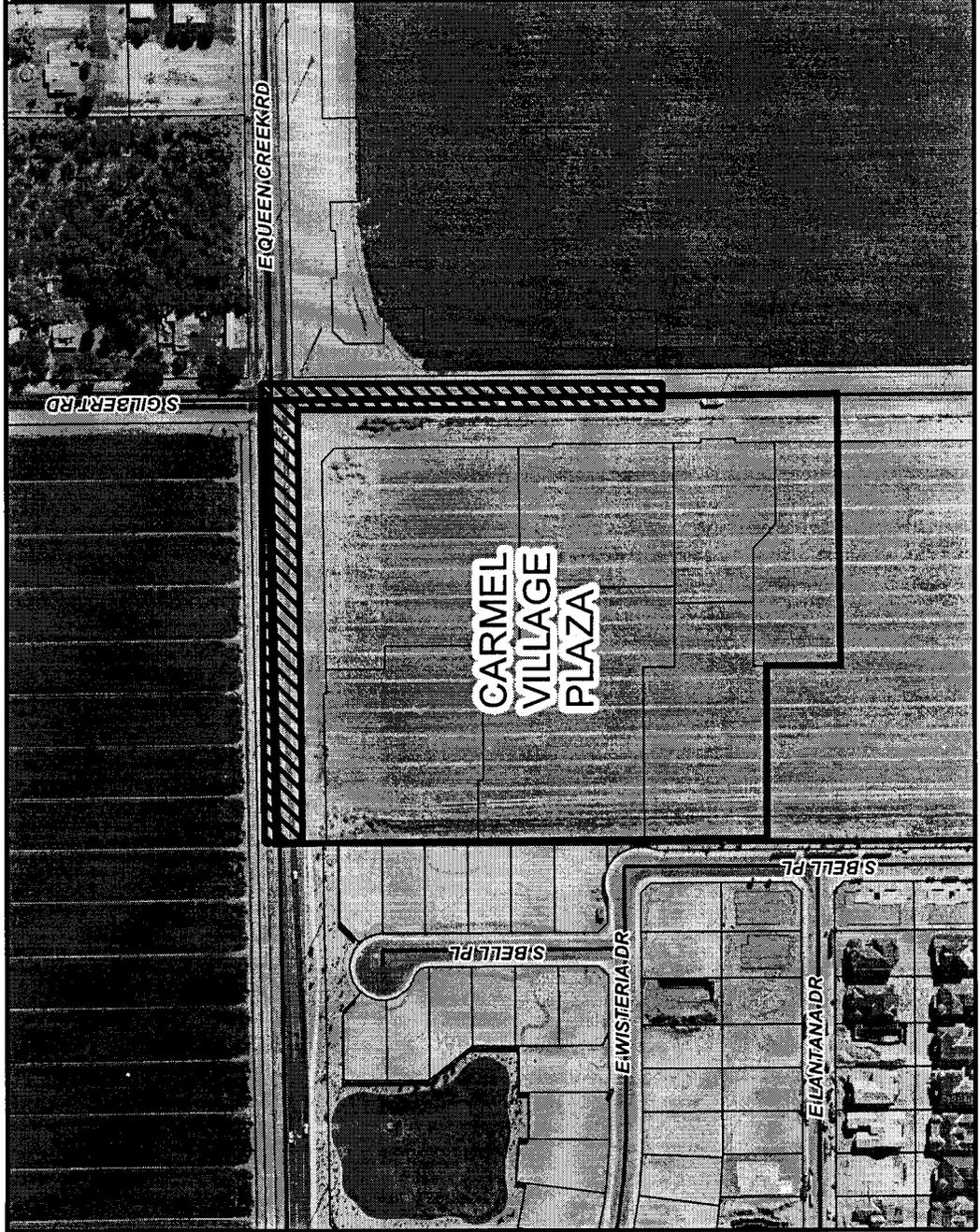
EXHIBIT "B"
CARMEL VILLAGE PLAZA
COST BREAKDOWN OF DEFERRED IMPROVEMENTS

Improvement costs of the offsites is One Hundred Twenty Five Thousand, Two Hundred Ninety Four Dollars and No cents, which has been determined as follows:

Description	Est. Qty.	Unit	Unit Price	Extended Price
Queen Creek Road				
Single Curb	1,112	LF	\$16.00	\$17,792.00
Pavers	1,110	SF	\$10.00	\$11,100.00
Landscaping	2,425	SF	\$2.20	\$5,335.00
Sawcut	676	LF	\$2.00	\$1,352.00
Pavement Removals	810	SY	\$5.00	\$4,050.00
Pavement Replacement	361	SY	\$35.00	\$12,635.00
Gilbert Road				
Single Curb	966	LF	\$16.00	\$15,456.00
Pavers	1,050	SF	\$10.00	\$10,500.00
Landscaping	1,710	SF	\$2.20	\$3,762.00
Sawcut	769	LF	\$2.00	\$1,538.00
Pavement Removals	444	SY	\$5.00	\$2,220.00
Pavement Replacement	202	SY	\$35.00	\$7,070.00
Traffic control	1	LS	\$15,000.00	\$15,000.00
Mobilization/demobilization	1	LS	\$10,000.00	\$10,000.00
			<i>Subtotal</i>	\$117,810.00
			Engineering (15%)	\$13,922.00
			Contract Administration (10%)	\$9,281.00
			Contingencies (10%)	\$9,281.00
			<i>Grand Total -</i>	\$125,294.00



LOCATION MAP FOR CARMEL VILLAGE PLAZA OFFSITE AGREEMENT NO. 0A07-003



MEMO NO. ENG08-002

