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#24

SEP 20 2007

MEMORANDUM Public Works Engineering - Council Memo ENG08-005

DATE: SEPTEMBER 20, 2007

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER *WMP*
 DANIEL W. COOK, ACTING PUBLIC WORKS DIRECTOR *DWC*
 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 OA08-001 WITH GERMANN ROAD
 ASSOCIATES, LLC, DEFERRING THE INSTALLATION OF A TRAFFIC
 SIGNAL AT THE INTERSECTION OF GERMANN ROAD AND WRIGHT
 DRIVE AND ACCEPTING A LUMP SUM PAYMENT OF \$62,500.

RECOMMENDATION:

Staff recommends that Council approve Offsite Improvement and Construction Easement Agreement OA08-001 with Germann Road Associates, LLC, deferring the installation of a traffic signal at the intersection of Germann Road and Wright Drive and accepting a lump sum payment of \$62,500.

BACKGROUND AND DISCUSSION:

A commercial development, to be known as Redrock Business Plaza, is being constructed on the north side of Germann Road, immediately east of Wright Drive. The developer is Germann Road Associates, LLC. Associated with this development is a requirement for twenty-five percent participation in the installation of a traffic signal at the intersection of Germann Road and Wright Drive. The traffic generated by this development will not, by itself, create a need for this signal, but as the other corners develop the need will be created.

Since the traffic signal will not be required until sometime in the future and is only the partial responsibility of this developer, City staff came to the conclusion that the best approach would be to enter into an agreement under which the developer would make a lump sum payment to cover its portion of the cost and, in turn, be relieved of any further responsibility for this work. The funds received could then be held until an appropriate time for proceeding with construction.

The estimated total cost for completing the signal installation is \$250,000. This developer's portion of that cost is \$62,500. Under this agreement, that is the amount of the lump sum payment to be made by the developer.

FINANCIAL IMPLICATIONS:

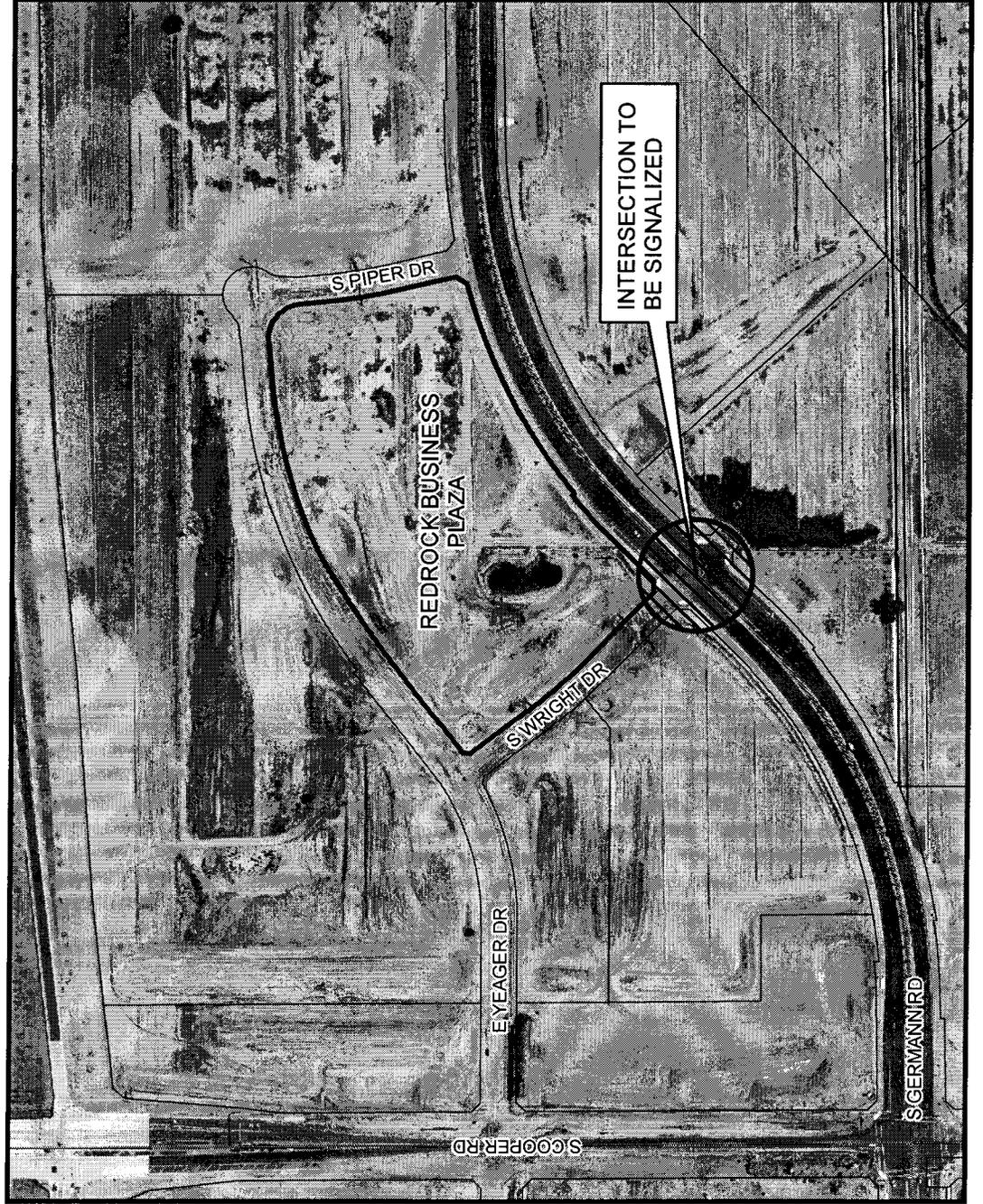
A lump sum payment, in the amount of \$62,500, will be received from the developer and held in an interest-bearing account until the time when this improvement is installed. At that time, these funds plus interest will be applied to the cost of the installation.

PROPOSED MOTION:

Move that Council approve Offsite Improvement and Construction Easement Agreement OA08-001 with Germann Road Associates, LLC, deferring the installation of a traffic signal at the intersection of Germann Road and Wright Drive and accepting a lump sum payment of \$62,500, and authorize the Mayor to sign the Agreement.

Attachments: Agreement No. OA08-001, Location Map

LOCATION MAP FOR REDROCK BUSINESS PLAZA OFFSITE AGREEMENT NO. OA08-001



MEMO NO. ENG08-005



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: OA08-001

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 Germann Road Associates, LLC (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 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:

**Lot 4, Chandler Airport Center Phase 1, according to Book 858 of Maps,
Page 9, Records of Maricopa County, Arizona.**

F. The City's Public Works 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:

Twenty five percent participation in the installation of traffic signalization of the intersection of Germann Road and Wright Drive.

2. The cost for the above referenced improvements is Sixty Two Thousand, Five Hundred Dollars and No Cents (\$62,500.00). 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, 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.

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

GERMANN ROAD ASSOCIATES, LLC

By: *[Signature]*

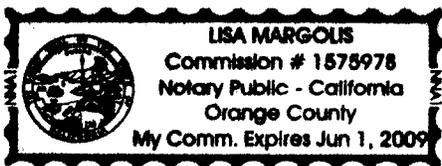
Its: *President*

CALIFORNIA
STATE OF ~~ARIZONA~~)
 ORANGE) ss.
County of ~~Maricopa~~

On this 7th day of August, 2007, before me, the undersigned Notary Public, personally appeared Paul M. Cate, President (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.

My Commission Expires: June 1, 2009



[Signature]
Notary Public

CITY OF CHANDLER

MAYOR

ATTEST

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY GAB

EXHIBIT "B"
COST BREAKDOWN OF DEFERRED IMPROVEMENTS
FOR REDROCK BUSINESS PLAZA

Improvement costs of the offsites is Sixty Two Thousand, Five Hundred Dollars and No cents, (\$62,500.00) which has been determined as follows:

Description	Total Cost	Percentage Share	Extended Price
Signalization of Intersection	190,000.00	25%	47,500.00
Engineering	22,000.00	25%	5,500.00
Contract Administration	19,000.00	25%	4,750.00
Contingencies	19,000.00	25%	4,750.00
		Grand Total	62,500.00