

#17
FEB 28 2008

MEMO TO: Mayor and City Council
THRU: Mary Wade, Chandler City Attorney *MW*
FROM: Glenn A. Brockman, Assistant City Attorney *GAB*
SUBJECT: Resolution No. 4160, Procedural Pre-Annexation Agreement
DATE: February 15, 2008

RECOMMENDATION: Staff recommends approval of Resolution No. 4160 authorizing a Procedural Pre-Annexation Agreement between the City of Chandler and CTW-Riggs Gateway, LLC.

BACKGROUND/DISCUSSION: The owner of approximately 30.40 acres of real property located at the northeast quadrant of Riggs Road and Arizona Avenue desires to enter into an agreement with the City of Chandler in order to facilitate annexation of the property for future development within the City's municipal boundaries. The owner of the property does not want the annexation to become effective if the zoning desired by the developer does not occur. Resolution No. 4160 authorizes a Procedural Pre-Annexation Agreement whereby the parties agree that if the desired zoning is not approved, the landowner may request a reconsideration of the annexation ordinance at a council meeting to be held within thirty (30) days after the adoption of the annexation ordinance, at which meeting the City would repeal the annexation ordinance.

PROPOSED MOTION: Move to approve Resolution No. 4160 authorizing a Procedural Pre-Annexation Agreement between the City of Chandler and CTW-Riggs Gateway, LLC, and authorize the Mayor to sign any necessary documents.

GAB/

Attachments: Vicinity Map
Proposed Agreement
Resolution No. 4160

RESOLUTION NO. 4160

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA APPROVING A PROCEDURAL PRE-ANNEXATION AGREEMENT BETWEEN THE CITY OF CHANDLER AND CTW-RIGGS GATEWAY, LLC.

WHEREAS, CTW-Riggs Gateway, LLC, an Arizona limited liability company ("Owner") owns approximately 30.40 acres of real property located at the northeast quadrant of Riggs Road and Arizona Avenue in Maricopa County, Arizona, which is legally described in Exhibit "A" and depicted in Exhibit "B", both exhibits being attached hereto and incorporated herein by this reference (the "Property"), and which Owner desires or may desire to annex into the City of Chandler; and

WHEREAS, Owner and the City of Chandler wish to enter into an agreement in order to facilitate annexation of the Property for future development within the municipal boundaries of the City of Chandler; and

WHEREAS, A.R.S. § 9-500.05 authorizes development agreements for the purpose of addressing annexation issues;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chandler, Arizona, hereby approves the Procedural Pre-Annexation Agreement between the City of Chandler and Owner, and authorizes the Mayor to execute the Agreement.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this _____ day of _____, 2008.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4160 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting was held on the _____ day of _____, 2008, and that a quorum was present thereat.

APPROVED AS TO FORM:



CITY ATTORNEY

CITY CLERK

When recorded, return to:
CITY OF CHANDLER
P.O. Box 4008, Mail Stop 602
Chandler, Arizona 85244-4008
Attn: Glenn A. Brockman

PROCEDURAL PRE-ANNEXATION AGREEMENT

This Procedural Pre-Annexation Agreement (this "Agreement") is entered into this _____ day of _____, 2008, by and between the CITY OF CHANDLER, an Arizona municipal corporation ("City"), and CTW-RIGGS GATEWAY, LLC, an Arizona limited liability company ("Owner") (collectively, the "Parties").

RECITALS

A. Owner holds fee simple title to approximately 30.40 acres of real property (the "Property"). The Property is located in Maricopa County, Arizona (the "County") and is legally described in attached Exhibit "A" and depicted in attached Exhibit "B". The Property is situated at the northeast quadrant of Riggs Road and Arizona Avenue, and is contiguous with City's boundaries along the entire south and west lines of the Property.

B. Subject to the terms and conditions of this Agreement, Owner may or does desire to annex the Property into City's municipal limits and process an application with City requesting Planned Area Development zoning ("PAD") and Preliminary Development Plan ("PDP") approvals (collectively, "PAD and PDP").

C. City may or does desire to annex the Property in accordance with A.R.S. § 9-471 and is willing to process Owner's request for annexation and application for PAD and PDP in accordance with applicable law and the terms and conditions of this Agreement.

D. The Parties have determined that it is or may be in their best and mutual interest to have the Property annexed into City's municipal limits and, subject to the final and effective approval of a proposed annexation of the Property, for Owner to process the PAD and PDP and other approvals through City rather than the County.

E. The Parties are entering into this Agreement pursuant to the provisions of A.R.S. § 9-500.05 in order to facilitate annexation of the Property for future development and to provide for a procedure to prevent the proposed annexation from becoming effective if Owner's PAD and PDP application is not approved subject to conditions that are acceptable to Owner.

F. The Parties neither desire nor intend that this Agreement shall in any way affect, hinder or interfere with the ability of City's governing body (the "City Council") to (i) approve or deny the annexation and/or PAD and PDP application and/or (ii) to impose conditions of approval in connection with the approval of PAD and PDP application.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises stated herein, the Parties state, confirm and agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Agreement as though fully restated.

2. Initiation of Annexation Processes. Upon Owner's request, City agrees to initiate proceedings to annex the Property into City's municipal limits and to issue an annexation petition to Owner. Concurrent with an annexation ordinance for the Property (the "Annexation Ordinance") being introduced for consideration by the City Council, City shall also introduce for consideration by the City Council an ordinance for City's proposed initial zoning classification for the Property (the "Equivalency Zoning Ordinance") (collectively, the "Annexation and Equivalency Ordinances").

3. PAD and PDP Application and Effectiveness. Owner has applied or agrees to apply to City for PAD and PDP. City agrees to process such application in accordance with applicable law and the terms and conditions of this Agreement. If Owner makes application for PAD and PDP prior to the Annexation and Equivalency Ordinances being introduced to the City Council for its consideration, then City shall schedule, advertise and conduct hearings before City's Planning & Zoning Commission and the City Council so that Owner's application for PAD and PDP are considered by the City Council concurrent with the Annexation and Equivalency Ordinances. If the City Council approves the PAD and PDP application and finally adopts the zoning ordinance authorizing the PAD (the "PAD Ordinance"), then the effective date of the PAD Ordinance shall be established as being after the effective date of the Annexation and Equivalency Ordinances.

4. Annexation and Equivalency Ordinances Adoption and Effectiveness. City agrees that at any time prior to the City Council's adoption of the Annexation Ordinance, Owner may withdraw the annexation petition for the Property. In the event the City Council adopts the Annexation and Equivalency Ordinances and such Ordinances are not timely rescinded by the City Council or challenged by referendum, the Annexation and Equivalency Ordinances will become effective thirty (30) calendar days after being adopted by the City Council as outlined in A.R.S. § 9-471. In the event (a) Owner withdraws its PAD and PDP application, (b) the City Council denies Owner's PAD and PDP application before the Annexation and Equivalency Ordinances have become final and effective, or (c) the Annexation Ordinance, the Equivalency Zoning Ordinance and/or the PAD Ordinance are challenged by reconsideration or referendum, the City Council shall (by Motion for Reconsideration or other appropriate means) schedule, advertise and conduct a City Council hearing to rescind the Annexation and Equivalency Ordinances prior to the effective date of the Annexation and Equivalency Ordinances. City agrees that at such hearing (for Reconsideration or otherwise), City shall repeal the Annexation Ordinance and the Equivalency Zoning Ordinance.

5. No Effect on PAD and PDP Application. The Parties agree that nothing in this Agreement shall affect the ability of the City Council to approve or deny the PAD and PDP application and/or to impose Conditions of Approval on City's approval of the PAD and PDP.

6. No Requirement to Proceed. The Parties agree that nothing in this Agreement shall require any of the Parties to proceed with the proposed annexation, the proposed PAD and PDP and/or development of the Property or otherwise consent to any condition or stipulations attached thereto.

7. Prop. 207 Waivers. On or before the Annexation and Equivalency Ordinances are placed on the City Council's agenda for introduction and tentative approval, Owner shall provide to City a completed "Proposition 207 Waiver" applicable to the Annexation and Equivalency Ordinances in form acceptable to City's legal counsel. The Parties acknowledge and agree that City may and most likely will record the waiver form. Owner shall also provide to City a separate Proposition 207 Waiver form acceptable to the City's legal counsel in connection with Owner's PAD and PDP application. The Parties acknowledge and agree that City also may and most likely will record the waiver form. In the event the Annexation and Equivalency Ordinances and/or the PAD Ordinance are not approved, or are rescinded, repealed or otherwise of no effect, the Parties shall take such steps as are required to timely release or rescind any applicable Proposition 207 Waiver.

8. Miscellaneous.

a. Good Standing; Authority. Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the laws of the State of Arizona and that the individual(s) executing this Agreement on behalf of their respective party is authorized and empowered to bind the party on whose behalf each such individual is signing.

b. Default and Remedies. In the event City is in default hereunder, Owner shall have all remedies available at law or in equity (including expedited equitable relief), whether under this Agreement or otherwise.

c. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement shall be deemed made and entered into in Maricopa County, Arizona.

d. Development Agreement. This Agreement is intended to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05.

e. Waiver. No waiver by any party of a breach of any of the terms 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 or condition contained herein.

f. Severability. In the event that any phrase, clause, sentence, paragraph, or other 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 full force and effect to the fullest extent permissible by law and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve its intent notwithstanding such invalidity or unenforceability.

g. Attorneys' Fees. If any judicial proceeding is initiated by any party hereto with respect to this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief to which it is entitled, its costs and expenses incurred in connection with such legal proceeding, including, without limitation, its reasonable attorneys' fees.

h. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been fully delivered upon personal delivery or the date of delivery or attempted delivery by United States Mail, postage prepaid, by certified mail, return receipt requested or a commercial overnight delivery service and the date of such delivery or attempted delivery shall be evidenced by the US Mail receipt or commercial delivery service record. All notices shall be addressed to the respective Parties as follows:

To City: Planning & Development Department
City of Chandler
P.O. Box 4008, Mail Stop 401
Chandler, Arizona 85244-4008
Attn.: Doug Ballard

Copy to: City Attorney
City of Chandler
P.O. Box 4008, Mail Stop 602
Chandler, Arizona 85244-4008
Attn.: Glenn Brockman

To Owner: CTW-Riggs Gateway, LLC
5635 North Scottsdale Road, Suite 150
Scottsdale, Arizona 85250
Attn: _____

Copy to: David Cisiewski, Esq.
Law Office of David Cisiewski, PLLC
11811 North Tatum Blvd., Suite 1051
Phoenix, Arizona 85028

Notice of address may be changed by any party by giving notice to the other party in writing of a change of address. Such change shall be deemed to have been effectively noticed five (5) business days after mailed by the party changing address.

i. Time of Essence. Time is of the essence of this Agreement.

j. Effective Date. This Agreement is entered into effective as of the date of full execution by the Parties.

k. Recordation. No later than ten (10) days after the effective date, the City will record this Agreement in the Official Records of Maricopa County.

l. 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 superceded and merged herein.

m. Limitation of Liability. No member, shareholder, partner, owner, manager, officer, director, representative, agent, official or employee of either Party shall be personally liable to the other parties or any successor or assignee, (a) in the event of any default or breach by any Party, (b) for any amount which may become due to such Party or its successor or assign, or (c) pursuant to any obligation of any Party under the terms of this Agreement.

n. Amendments. This Agreement may be amended only by a written agreement fully executed by the Parties.

o. No Assignment; Automatic Termination. The interests of each of the Parties to this Agreement are not assignable and this Agreement does not run with the land or real property described herein. If, within two (2) years from the date that this Agreement is recorded, Owner does not request City to initiate proceedings to annex the Property into City's municipal limits, or, after making such request, Owner does not timely proceed to complete and file the required annexation petition pursuant to A.R.S. § 9-471, then this Agreement shall automatically be deemed to have terminated and be of no further effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written above.

CITY: CITY OF CHANDLER, an Arizona
municipal corporation

By: _____
Mayor

Date: _____

ATTESTED TO:

City Clerk

APPROVED BY:

City Attorney

OWNER: CTW-RIGGS GATEWAY, LLC, an
Arizona limited liability company

By: _____

Its: _____

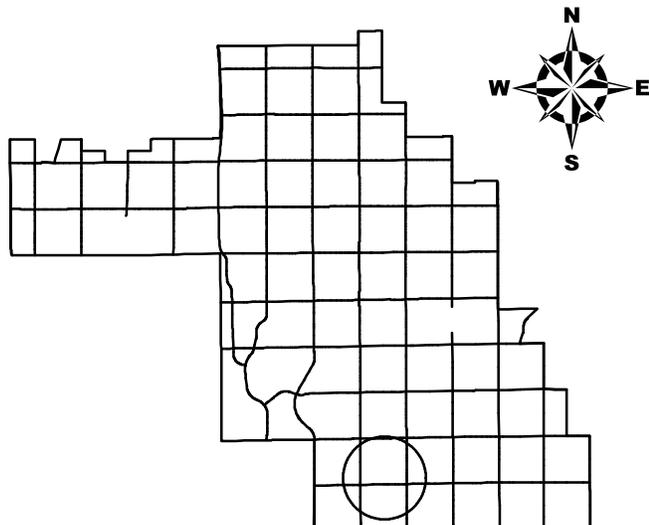
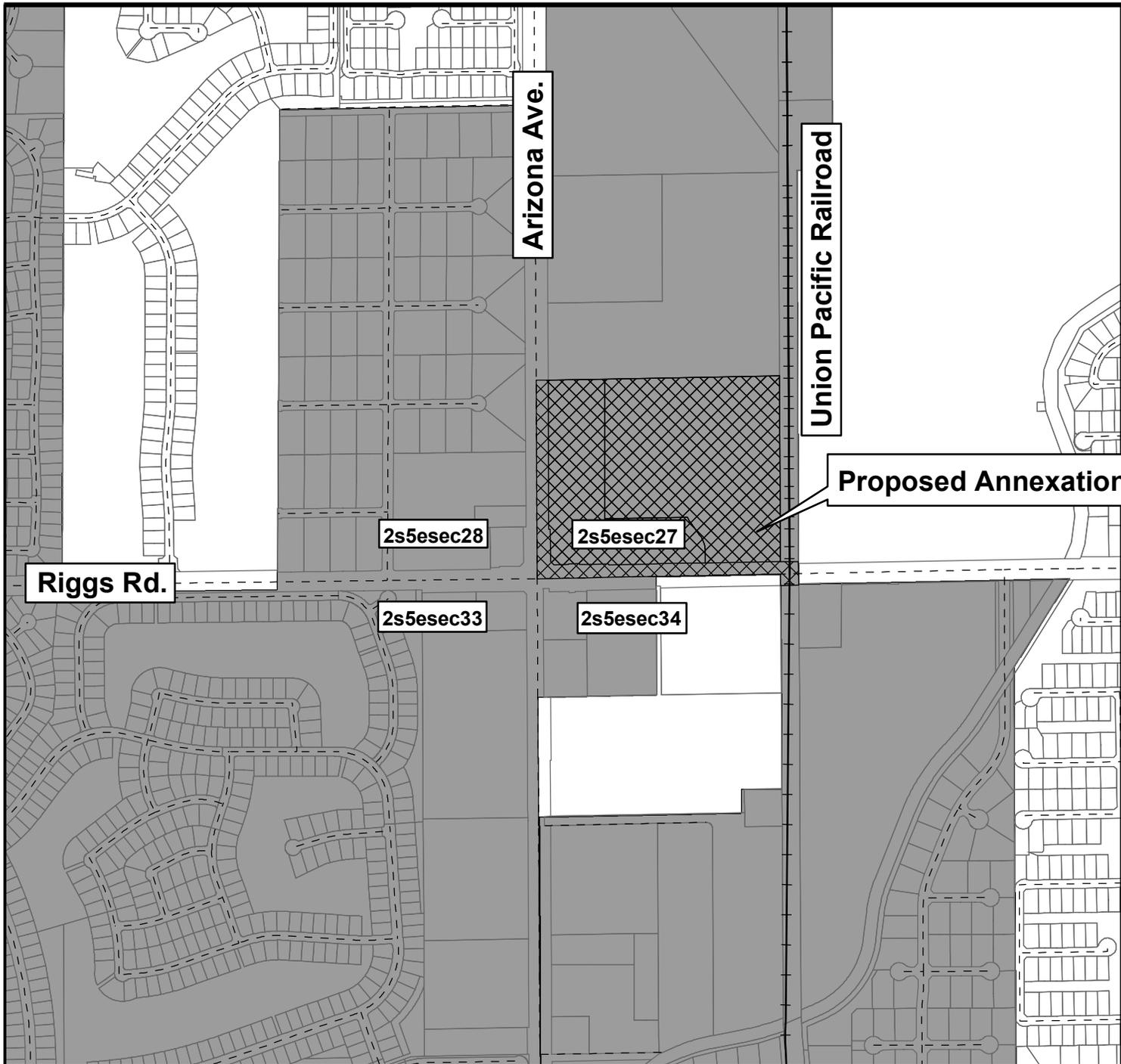
Date: _____

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, the _____ of CTW-Riggs Gateway, LLC, an Arizona limited liability company, on behalf of the limited liability company.

Notary Public

My Commission Expires:



Annexation Map

-  **Proposed Annexation**
Northeast Corner of Arizona Avenue and Riggs Road
-  **Incorporated Area**
-  **Unincorporated Area**

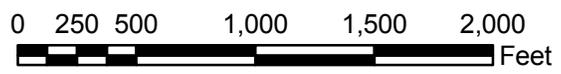


Exhibit B