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46
APR 24 2008

MEMORANDUM

Public Works Engineering - Council Memo ENG08-040

DATE: April 24, 2008

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
ROBERT ZEDER, PUBLIC WORKS DIRECTOR
SHEINA HUGHES, ASSISTANT PUBLIC WORKS DIRECTOR/CITY ENGINEER

FROM: CHARLES W. SMITH, ENGINEER *CWS*

SUBJECT: Approval of Offsite Improvement and Construction Easement Agreement OA07-006 with Maracay Stonefield LLC, deferring improvements to Germann Road across the frontage of the Stonefield subdivision and accepting a lump sum payment of \$190,862.

RECOMMENDATION:

Staff recommends that Council approve Offsite Improvement and Construction Easement Agreement OA07-006 with Maracay Stonefield LLC, deferring improvements to Germann Road across the frontage of the Stonefield subdivision and accepting a lump sum payment of \$190,862.

BACKGROUND AND DISCUSSION:

A residential subdivision, to be known as Stonefield, is being constructed on the south side of Germann Road about a quarter mile east of Dobson Road. The developer is Maracay Stonefield LLC. Associated with this development is a requirement to construct certain offsite improvements along Germann Road, including a right turn lane into the property, a median break in front of the property, concrete pavers in the median, valley gutters and aprons at the property entrance, and curb, gutter, scuppers, sidewalk ramps, and temporary retention basins and streetlights along the frontage of the property. The City has a current capital improvement project (Project No. ST0605-401) that includes the improvement of this portion of Germann Road. In order to minimize the need for coordination between two contractors and to prevent having traffic on Germann Road disrupted twice, it was concluded that the preferred approach was to obtain a lump sum payment from the developer and incorporate this work into the City project. Accordingly, a lump sum offsite improvement agreement has been prepared to cover this work.

Under the proposed agreement, the developer will make a lump sum payment to cover his obligation for these improvements, and in exchange for this lump sum payment, the developer will be relieved of any further responsibility for this work. The funds received by the City will be applied to the cost of constructing the improvements.

The estimated total cost for completing this work is \$190, 862. 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 \$190,862, will be received from the developer and applied to the cost of the improvements.

PROPOSED MOTION:

Move that Council approve Offsite Improvement and Construction Easement Agreement OA07-006 with Maracay Stonefield LLC, deferring improvements to Germann Road across the frontage of the Stonefield subdivision and accepting a lump sum payment of \$190,862, and authorize the Mayor to sign the Agreement.

Attachments: Agreement No. OA07-006, 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)**

AGREEMENT NUMBER: OA07-006

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 Maracay Stonefield 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 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:

**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 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, as shown on plans prepared by Entellus for City of Chandler Project Number ST0605-401:

- One right turn lane from Germann Road into the property
- Valley gutters and aprons at entrance to the property
- One median break in Germann Road as shown in the plans
- Concrete pavers for hardscape median in Germann Road
- Curb and gutter along the frontage of the property on Germann Road
- Two scuppers
- Two temporary retention basins
- Two sidewalk ramps
- Eight streetlights
- Striping, turn arrows, reflectors, sign posts and signage

2. The cost for the above referenced improvements is One Hundred Ninety Thousand, Eight Hundred Sixty Two Dollars and No cents, (\$190,862.00). 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. The City (Grantee) shall indemnify, defend and hold harmless Developer (Grantor) for any damages, claims or losses, including without limitation litigation costs and fees, arising from the negligent use or intentional misuse of the easement property and surrounding Grantor's property by Grantee, its authorized agents, contractors or assigns, during the period that this easement is in effect. The aforementioned indemnification shall survive the expiration or termination of this easement.

7. This Agreement shall be construed in accordance with the laws of the State of Arizona.

8. 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.

9. 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.

10. Time is of the essence in this Agreement.

11. In this Agreement, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

12. 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.

13. 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.

MARACAY STONEFIELD, LLC

By: Maracay Homes Arizona I, L.L.C.

Its: Manager

By: [Signature]
Its: V.P. Land Acquisition

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this 7th day of April, 2008, before me, the undersigned Notary Public, personally appeared Thomas H. Lemor, VP Land Acquisition (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:

[Signature]
Notary Public



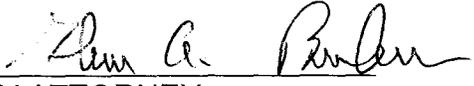
CITY OF CHANDLER

MAYOR

ATTEST

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

**EXHIBIT "A"
STONEFIELD
LEGAL DESCRIPTION**

A PORTION OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 2 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP STAMPED 1557 MARKING THE NORTHWEST CORNER OF SAID SECTION 8 FROM WHICH A FOUND BRASS CAP IN PAVEMENT MARKING THE NORTH QUARTER CORNER OF SAID SECTION 8 BEARS NORTH 89 DEGREES 52 MINUTES 00 SECONDS EAST 2680.88 FEET;

THENCE NORTH 89 DEGREES 52 MINUTES 00 SECONDS EAST, ALONG THE NORTH LINE OF THE NORTHWEST QUARTER A DISTANCE OF 1018.03 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 89 DEGREES 52 MINUTES 00 SECONDS EAST, ALONG SAID NORTH LINE 1600.85 FEET;

THENCE SOUTH 00 DEGREES 43 MINUTES 00 SECONDS WEST, ALONG THE WEST LINE OF HOMESTEAD PARK AS RECORDED IN BOOK 709 OF MAPS, PAGE 13, MARICOPA COUNTY RECORDS, A DISTANCE OF 1320.87 FEET;

THENCE SOUTH 89 DEGREES 55 MINUTES 57 SECONDS WEST, ALONG SAID NORTH LINE OF CLEMENTE RANCH PARCEL 15 AS RECORDED IN BOOK 417 OF MAPS, PAGE 41, MARICOPA COUNTY RECORDS, A DISTANCE OF 1275.68 FEET;

THENCE NORTH 00 DEGREES 35 MINUTES 53 SECONDS EAST, 155.32 FEET;

THENCE SOUTH 89 DEGREES 55 MINUTES 57 SECONDS WEST, 319.99 FEET;

THENCE NORTH 00 DEGREES 28 MINUTES 45 SECONDS EAST, 1163.65 FEET TO THE POINT OF BEGINNING.

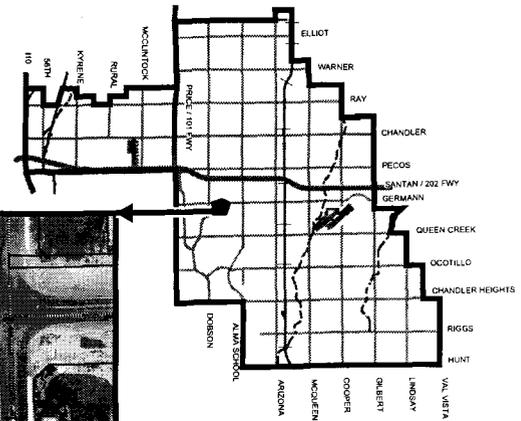
EXHIBIT "B"
COST BREAKDOWN OF DEFERRED IMPROVEMENTS

Improvement costs of the offsites is One Hundred Ninety Thousand, Eight Hundred Sixty Two Dollars and No cents, (\$190,862.00) which has been determined as follows:

Description	Cost
Removal of asphalt & concrete pavement	5,670.00
Roadway excavation	1,157.00
Parkway grade	1,463.00
Retention basins	1,279.00
Haul off excess and spoils	3,985.00
Paving	16,717.00
Adjust 3 manholes	975.00
Adjust 3 valves, F & C	750.00
Install 6" vertical curb & gutter	10,625.00
Install 2 sidewalk ramps	3,538.00
Install median pavers and nose	4,458.00
Install valley gutter & aprons	6,948.00
Install 8 street lights	30,993.00
Install striping & pavement markers	590.00
Install signage & sign posts	1,425.00
Install PVC landscape irrigation sleeves	660.00
Install 2 scuppers	22,647.00
Mobilization, traffic control & general site items	20,429.00
Total Direct Costs for Work Items	134,309.00
Overheads	35,223.00
<i>Subtotal</i>	169,532.00
Contingency	7,899.00
Engineering	13,431.00
Grand total	190,862.00



LOCATION MAP FOR STONEFIELD SUBDIVISION OFFSITE AGREEMENT NO. OA07-006



MEMO NO. ENG08-040

