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MAY 22 2008



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MEMORANDUM Public Works Engineering - Council Memo ENG08-047

DATE: May 22, 2008

TO: MAYOR AND COUNCIL

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

FROM: CHARLES W. SMITH, ENGINEER *CWS*

SUBJECT: Approval of Offsite Improvement and Construction Easement Agreement OA08-002 with Mammoth Chandler 1, LLC, deferring improvements to Price Road associated with the Mammoth Professional Building development, including one right turn lane into the property, one scupper, several segments of potable and reclaimed water mains, and curb and gutter across the frontage of the property, and accepting a lump sum payment of \$249,303.

RECOMMENDATION:

Staff recommends that Council approve Offsite Improvement and Construction Easement Agreement OA08-002 with Mammoth Chandler 1, LLC, deferring improvements to Price Road associated with the Mammoth Professional Building development, including one right turn lane into the property, one scupper, several segments of potable and reclaimed water mains, and curb and gutter across the frontage of the property, and accepting a lump sum payment of \$249,303.

BACKGROUND AND DISCUSSION:

A professional office development, identified as Mammoth Professional Building, is being constructed at the northwest corner of Price Road and Willis Road. The developer is Mammoth Chandler 1, LLC. Associated with this development is a requirement to construct certain offsite improvements, including a right turn lane from Price Road into the property, curb and gutter along the frontage of the property on Price Road, one scupper, 135 lineal feet of 8" potable water main, 135 lineal feet of 6" potable water main, 5 lineal feet of 8" reclaimed water main, and potable water and reclaimed water flushing pipes. The City is currently constructing a capital improvement project (Project No. ST0504-402) that includes the improvement of this portion of Price Road. In order to minimize the need for coordination between two contractors and to prevent having traffic on Price 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 \$249,303. 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 \$249,303, 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 OA08-002 with Mammoth Chandler 1, LLC, deferring improvements to Price Road associated with the Mammoth Professional Building development, including one right turn lane into the property, one scupper, several segments of potable and reclaimed water mains, and curb and gutter across the frontage of the property, and accepting a lump sum payment of \$249,303, and authorize the Mayor to sign the Agreement.

Attachments: Agreement No. OA08-002, 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: OA08-002

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 Mammoth Chandler 1, 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 AMEC Infrastructure Inc. for City of Chandler Project Number ST0504-402:

- One right turn lane from Price Road into the property
- Curb and gutter along the frontage of the property on Price Road
- One scupper
- 135 lineal feet of 8" potable water main with tee and valves
- 135 lineal feet of 6" potable water main with valves
- 5 lineal feet of 8" reclaimed water main with tee and valves
- Potable water and reclaimed water flushing pipes

2. The cost for the above referenced improvements is Two Hundred Forty Nine Thousand, Three Hundred Three Dollars and No cents, (\$249,303.00). 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.

MAMMOTH CHANDLER 1, LLC

By: 

Its: 

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this _____ day of _____, 20____, before me, the undersigned Notary Public, personally appeared _____, _____(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:

Notary Public

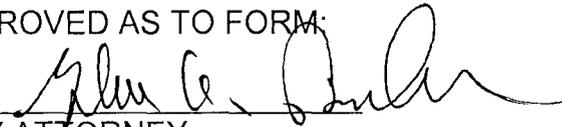
CITY OF CHANDLER

MAYOR

ATTEST

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

EXHIBIT "A"
MAMMOTH
LEGAL DESCRIPTION

The South 450.52 feet of the Southwest quarter of the Northwest quarter of Section 6, Township 2 South, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the West 241.71 feet thereof; and

EXCEPT the East 607.36 feet thereof;

And more fully described as follows:

That portion commencing at the West quarter corner of said Section 6;

THENCE North 89 degrees 06 minutes 03 seconds East, along the South line of said Southwest quarter of the Northwest quarter of Section 6, a distance of 242.04 feet to the TRUE POINT OF BEGINNING;

THENCE North 00 degrees 11 minutes 45 seconds West, a distance of 450.67 feet;

THENCE North 89 degrees 07 minutes 19 seconds East, a distance of 478.65 feet;

THENCE South 00 degrees 10 minutes 52 seconds East, a distance of 450.49 feet;

THENCE South 89 degrees 06 minutes 03 seconds West, a distance of 478.54 feet to the TRUE POINT OF BEGINNING;

EXCEPT that portion commencing at the West quarter corner of said Section 6;

THENCE North 89 degrees 06 minutes 03 seconds East, along the South line of said Southwest quarter of the Northwest quarter of Section 6, a distance of 519.99 feet;

THENCE North 00 degrees 53 minutes 57 seconds West, a distance of 33.07 feet, to the TRUE POINT OF BEGINNING;

THENCE North 00 degrees 53 minutes 57 seconds West, a distance of 7.00 feet;

THENCE North 89 degrees 06 minutes 03 seconds East, a distance of 110.09 feet;

THENCE North 44 degrees 27 minutes 35 seconds East, a distance of 28.46 feet;

THENCE North 00 degrees 10 minutes 52 seconds West, a distance of 390.45 feet;

THENCE North 89 degrees 07 minutes 19 seconds East, a distance of 71,00 feet;

THENCE South 00 degrees 10 minutes 52 seconds East, a distance of 417.42 feet;

THENCE South 89 degrees 06 minutes 03 seconds West, a distance of 201.00 feet to the TRUE POINT OF BEGINNING;

EXCEPT that portion commencing at the West quarter corner of said Section 6;

THENCE North 89 degrees 06 minutes 03 seconds East, along the South line of said Southwest quarter of the Northwest quarter of Section 6, a distance of 242.04 feet to the TRUE POINT OF BEGINNING;

THENCE continuing North 00 degrees 11 minutes 45 seconds West, a distance of 33.07 feet;

THENCE North 89 degrees 06 minutes 03 seconds East, a distance of 478.55 feet;

THENCE South 00 degrees 10 minutes 52 seconds East, a distance of 33.07 feet;

THENCE South 89 degrees 06 minutes 03 seconds West, a distance of 478.54 feet to the TRUE POINT OF BEGINNING.

EXHIBIT "B"
COST BREAKDOWN OF DEFERRED IMPROVEMENTS

Improvement costs of the offsites is Two Hundred Forty Nine Thousand, Three Hundred Three Dollars and No cents, (\$249,303.00) which has been determined as follows:

Description	Cost
Remove concrete curb	2,252.00
Remove asphalt	909.00
Remove concrete sidewalk	543.00
Remove concrete ditch	775.00
Saw cutting	747.00
1" AC milling	305.00
Roadway excavation	4,534.00
Haul off excess (allowance)	8,500.00
Subgrade preparation	3,028.00
Install AC pavement	58,014.00
Install vertical curb & gutter	5,950.00
Install 135 feet of 8" potable water main	13,568.00
Install 135 feet of 6" potable water main	6,548.00
Install potable water valves, tees and flushing pipe	25,650.00
T-top AC patch including removal and replacement	5,310.00
Install 5 feet of 8" reclaimed water main	700.00
Install reclaimed water valves, tee and flushing pipe	7,615.00
Install scupper	5,808.00
Additional direct costs	19,278.00
Mobilization, traffic control & general site items	20,548.00
Total Direct Costs for Work Items	190,582.00
Overheads	23,826.00
<i>Subtotal</i>	214,408.00
Contingency	15,837.00
Engineering	19,058.00
Grand total	249,303.00

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ORANGE }

On APRIL 14, 2008 before me, LIISA LIPPINCOTT, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

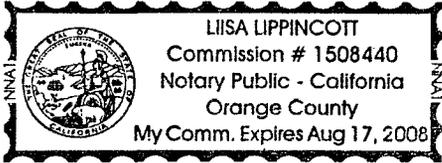
personally appeared LEE ROTSHENK
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Liisa Lippincott
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

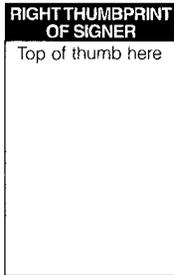
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

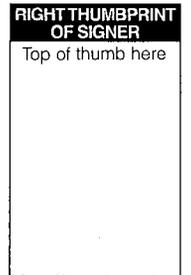
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

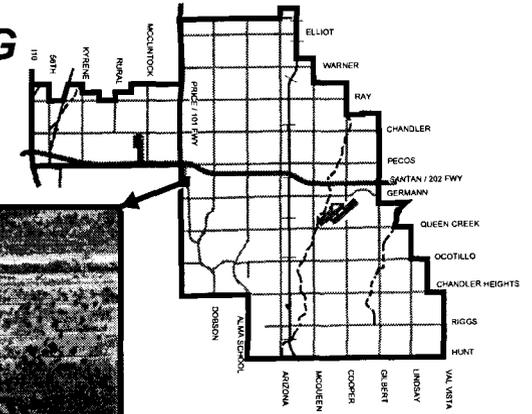
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____



LOCATION MAP FOR MAMMOTH PROFESSIONAL BUILDING OFFSITE AGREEMENT NO. OA08-002



MEMO NO. ENG08-047

