

**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: DEVELOPMENT SERVICES/PLANNING DIVISION

AGENDA DATE: JULY 10, 2007

CONTACT PERSON/PHONE: KAREEM DALLO, P.E., 541-4425

DISTRICT(S) AFFECTED: 5

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

RESOLUTION - CONSENT AGENDA

That the City Manager be authorized to sign an Agreement by and between the City of El Paso and JNC Development, Inc., to allow JNC Development, Inc., access to a City ponding area on Lot 7, Block 45, Sun Ridge Unit 19, El Paso, El Paso, County, Texas to construct ponding area improvement. There is no cost to the City.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Per Agreement

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

R. Alan Shubert, P.E., CBO, Development Services Director

(Example: if RCA is initiated by Purchasing, client department should sign also)

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RESOLUTION

WHEREAS, the Developer is developing Sun Ridge Unit 15, in the City of El Paso, El Paso County, Texas, hereinafter referred to as the "Sun Ridge Unit 15" and will have a retention pond on Lot 33, Block 49 (the Unit 15 Pond); and

WHEREAS, Sun Ridge Unit 9 is located immediately east of Sun Ridge Unit 15 and contains a pond on Lot 7, Block 45, Sun Ridge Unit 9 (the Unit 9 Pond) and is immediately adjacent to the Unit 15 Pond, as more fully shown on the Plat of Sun Ridge Unit 15 attached hereto as Exhibit A; and

WHEREAS, the Developer intends to construct the Unit 15 Pond so that it will be a part of and adjoin the Unit 9 Pond, and to combine both ponds into a single large pond; and

WHEREAS, the Developer has requested permission to enter upon the Unit 9 Pond for the purpose of completing the construction of the Unit 15 Pond and joining both the Unit 9 Pond and the Unit 15 Pond into a single large pond; and

WHEREAS, the City agrees that in consideration for use and entry of the pond, the improvements will further the drainage in the area and is in the best interest of the City.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign an Agreement by and between the City of El Paso and JNC Development, Inc, to allow JNC Development, Inc. access to a City ponding area on Lot 7, Block 45, Sun Ridge Unit 9, El Paso, El Paso, County, Texas to construct ponding area improvements. There is no cost to the City.

ADOPTED this ____ day of _____, 2007.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E., C.B.O.
City Engineer

CITY CLERK DEPT.

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construction costs arising from the construction of required improvements to the Pond, except as provided herein.

The Developer shall comply with all applicable federal, state and local law including all City ordinances, codes and regulations, Failure to do so in any manner shall constitute a material breach of this Agreement. In addition, the Developer shall obtain all permits and inspections required by the City and be responsible for any costs associated with obtaining such permits and inspections. A schedule shall be submitted to the City Engineer as to when work will be completed under this Agreement upon execution of this Agreement. Schedule of work is to be submitted to the City Engineer no later than 15 days after execution of this agreement but under no circumstances shall the work, as identified in Exhibit "B", be completed no later than sixty days from the date this Agreement is approved by Council.

The Developer agrees to furnish the City with a copy of each written agreement entered into with a contractor or consultant retained to provide labor, materials or services relating to the construction on the Unit 9 Pond. All of the books and records related to the construction on the Unit 9 Pond shall be available for inspection by the City upon request. Any work performed by a contractor or consultant of the Developer will not, under any circumstances, relieve the Developer of its responsibilities and obligations under this Agreement. All work performed by the Developer or its agent shall be done in a good and workmanlike manner satisfactory to the City. Any contractor or consultant hired by the Developer shall have sufficient skills and experience to properly perform the work described in the City's specifications and shall provide adequate supervision to assure competent performance of the work.

The Developer shall submit detailed plans to the City Engineering Department for approval, with copy to the Street Department. Approval by the City shall not be unreasonably withheld. Failure to submit, obtain the approval, or distribute the approved plan as herein provided shall result in an automatic termination of this Agreement.

2. TERM

This Agreement shall automatically terminate after the construction of the improvements to the Unit 9 Pond is completed, and the City Engineer has inspected the Unit 9 Pond to assure that City specifications have been met. If the City Engineer determines that the City's specifications have not been met, the Developer shall be responsible for any necessary corrections and alterations and all costs associated with any necessary corrections and alterations. The City shall not be responsible nor participate in any costs accrued in such instance. In addition, the Developer agrees to give a warranty on its work in accordance with the requirements of the Municipal Code.

3. COSTS

The Developer will bear all costs and expenses of the construction to join the Unit 9 Pond with the Unit 15 Pond.

4. INDEMNITY, RELEASE, AND INSURANCE

The Developer agrees to indemnify and hold the City harmless against any and all claims, demands, damages, costs and expenses, including, but not limited to, investigation expenses and reasonable attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the construction of the improvements to the Unit 9 Pond, as herein defined more specifically, including, but not limited to, claims and liens from subcontractors, bonding companies, employees or other individuals, for obligations arising from the contract, or from any breach on the part of the Developer of the terms of this agreement, or from any damage to property or injury to person(s) arising from or allegedly arising from the Developer's work under this Agreement.

The Developer further agrees, with the express authority of any other entity or individual in privity with the Developer, now or in the past, that it shall release and forever discharge the City, its agents, employees, representatives, attorneys, and administrators from all claims, liens, demands, damages, actions, causes of action or suits in equity, of any kind or nature, accruing, whether known or unknown on this date, for or because of any matter or thing done, omitted, or suffered to be done or omitted in any way directly or indirectly arising from the construction of the improvements to the Pond, including but not limited to, attorney's fees, costs of preparing a claim or other costs.

The provisions of this section shall survive the expiration or early termination of this agreement. The Developer's obligations under this section shall continue in perpetuity.

The Developer shall provide public liability insurance for personal injuries and death growing out of any one (1) accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one (1) accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one (1) accident or other cause. These amounts are not a limitation upon the Developer's agreement to indemnify and hold the City harmless.

The Developer shall procure said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insureds. The Developer shall file a copy of the policy or certificate of insurance with the City Clerk, the Engineering Department, and the City Attorney's Office. A certificate of the insurance shall be placed on file upon approval of this agreement by the City Council of the City of El Paso.

5. NOTICES

All notices, communications and reports under this Agreement shall be either hand-delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is otherwise notified in writing:

City: City Manager
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901-1196

Copy to: City Engineer
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901-1196

Developer: JNC Development, Inc.
12300 Montwood
El Paso, Texas 79928

6. CUMULATIVE RIGHTS

All remedies, either under this Agreement or at law or in equity or otherwise available to a party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination.

7. GOVERNING LAW

All questions concerning the validity, operation, and interpretation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.

8. INTERPRETATION

This Agreement shall be deemed to have been jointly prepared by all parties hereto, and no ambiguity herein shall be construed for or against any party based upon the identity of the author of this Agreement or any portion hereof.

9. ASSIGNMENT

The Developer shall have the right to assign its rights and obligations in this Agreement. In the event that the Developer does assign its rights under this Agreement, the assignee shall execute an assignment agreeing that it will be responsible for all of the obligations of Developer, a copy of which shall be sent to the City.

10. RELATIONSHIP

It is expressly understood and agreed by and between the parties that the Developer is not an officer, agent or employee of the City and is not subject to the direct or continuous supervision and control of the City. The City and the Developer hereby acknowledge and agree

that the City has not formed, and is not forming with the Developer or any other party, a partnership, joint venture, or any other similar entity by entering into this Agreement; and this Agreement is not intended to and shall not be construed, to create any such entity or relationship.

11. ENTIRE AGREEMENT

This Agreement embodies and constitutes the entire understanding between the parties with respect to the transactions contemplated herein, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement. This Agreement may not be modified except by an instrument in writing signed by both parties.

12. AUTHORIZED SIGNATURE

The person executing this Agreement on behalf of the Developer warrants to the City that the Developer is a duly authorized and existing Texas corporation, that the Developer is qualified to do business in the State of Texas, that Developer has full right and authority to enter into this Agreement, and that every person signing on behalf of the Developer is authorized to do so.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO:

CITY MANAGER

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, P.E., C.B.O.
City Engineer

DEVELOPER:
JNC DEVELOPMENT, INC.

BY: 

CARLOS D. BOMBACH, PRESIDENT

ACKNOWLEDGEMENTS ON FOLLOWING PAGE

THE STATE OF TEXAS)
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