

### **COUNCIL ACTION FORM**

**SUBJECT: SUPPLEMENTAL FUNDING AGREEMENT – SOUTH FORK SUBDIVISION  
(INTERSECTION IMPROVEMENTS: LINCOLN WAY & DOTSON DRIVE)**

#### **BACKGROUND:**

On August 14, 2001, City Council approved a Development Agreement for the South Fork Subdivision with Terra Firma, LP for the installation of various public improvements associated with the development. One of those improvements identified was the construction of turn lanes and a traffic signal at the intersection of Lincoln Way and Dotson Drive. The developer is responsible for 50% of the actual construction costs; the City would pay the other 50% plus any engineering/inspection fees. It was also determined in an updated traffic study dated June 2010 that the Level of Service (LOS) had dropped below the threshold outlined in the Development Agreement, which has triggered the need for the improvement.

A portion of South Fork has been sold to Pinnacle Properties Ames, LLC, care of Keith Arneson, thereby transferring the public improvement costs to Mr. Arneson. Therefore, Staff has drafted a Supplemental Agreement that solidifies and updates the provisions in the existing agreement.

On February 28, 2012, City Council approved a Traffic Safety Improvement Program (TSIP) Grant from the Iowa DOT for \$500,000. This Supplemental Agreement will take that grant into account by applying it against the estimated cost for the improvement of \$750,000; leaving \$250,000 to be paid from 50% local/private funds and 50% by Mr. Arneson. That equals \$125,000 for which Mr. Arneson would need to provide financial security prior to the award of the project.

#### **ALTERNATIVES:**

1. Approve the Supplemental Funding agreement for the South Fork Subdivision with Pinnacle Properties Ames, LLC.
2. Direct staff to pursue other funding options.

#### **MANAGER'S RECOMMENDED ACTION:**

In the last year, Staff has been working with Mr. Arneson to make possible the in-fill development of the South Fork area, which notably represents additional single-family housing within the Ames School District. This agreement will help facilitate that in-fill, while at the same time helping to move forward needed public improvements for this neighborhood and transportation network.

Therefore, it is the recommendation of the City Manager that the City Council accept Alternative No. 1, thereby approving the Supplemental Funding agreement for the South Fork Subdivision with Pinnacle Properties Ames, LLC.

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DO NOT WRITE ABOVE THIS LINE; RESERVED FOR RECORDER

Prepared by: Judy K. Parks, City of Ames Legal Department, 515 Clark Ave., Ames, IA 50010; 515-239-5146  
Return to: Ames City Clerk, 515 Clark Ave., P.O. Box 811, Ames, IA 50010

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**A SUPPLEMENTAL AGREEMENT  
PERTAINING TO THE ROAD IMPROVEMENT COSTS FOR THE  
INTERSECTION IMPROVEMENTS AT LINCOLNWAY AND DOTSON DRIVE  
SOUTH FORK SUBDIVISION, AMES, IOWA**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of December, 2012, by and between the CITY OF AMES, IOWA (hereinafter called "City"), and Pinnacle Properties Ames, L.L.C., its successors and assigns (hereinafter called "Developer").

**WITNESSETH THAT:**

**WHEREAS**, the parties hereto previously entered into an agreement dated August 14, 2001, and filed for record that provided for cost sharing between City and Developer for road improvements contemplated to be necessary for the intersection improvements at Lincoln Way and Dotson Drive, and

**WHEREAS**, pursuant to that previous agreement the Developer and its successors and assigns are responsible for 50% of the costs the City associated with the construction of a left turn storage lane and traffic control signals at the said intersection to be done at such future time as traffic volumes warranted the improvement; and

**WHEREAS** Developer is the successor to Terra Firma, L. P., the Developer who executed the original agreement; and

**WHEREAS**, the City has determined that it is now necessary and warranted by traffic volumes to complete construction of the intersection improvements in the estimated cost of \$750,000, of which \$500,000 will be paid through grant funds; and

**WHEREAS**, the Developer and the City now desire to specify the manner of payment by the Developer to the City for the construction costs so that the project may proceed in a timely fashion;

**NOW THEREFORE**, the parties hereto have agreed and do agree as follows:

- A. The Parties agree that provision V. IMPROVEMENTS, subsection B(4) of the original agreement entered into on August 14, 2001, is hereby superseded by the provisions of this supplemental agreement.
- B. That in lieu of the former provision V(B)(4), the parties agree that the Developer shall provide to the City by December \_\_\_\_, 2012, an irrevocable letter of credit or payment bond, in a form acceptable to the City, in an amount of not less than one hundred twenty five thousand dollars (\$125,000.000). In the event the Ames City Council awards a contract for the construction of these intersections improvements on or after December \_\_\_\_, 2012, in an amount greater than \$750,000.00, the Developer immediately shall provide a supplemental or replacement letter of credit or payment bond to secure the Developer's 50% proportional share of the contract for the improvements plus amounts estimated by the City for Engineering and Construction inspection fees as provided in the Municipal Code, Appendix F.
- C. The City shall make payments to its contractor in accordance with the terms of the construction contract and shall draw down on the letter of credit or payment bond for the Developer's share of payments for work performed on the project. The City shall provide copies of all invoices and payments for the construction to the Developer at the time that payment is made to the construction contractor for construction work or to the City for Engineering and Construction inspection fees.
- D. If, during the progress of construction change orders are approved that increase the total costs of the project, the Developer shall immediately provide to the City a supplemental or replacement letter of credit, payment bond, or cash to secure the Developer's entire proportional share of the total amount of the contract plus estimated Engineering and Construction inspection fees.
- E. Upon final completion, payment, and project closeout, the City shall provide a final project accounting, including Engineering and Construction inspection fees, and shall release to the Developer any remaining letter of credit or payment bond. If, upon completion, payment, and project closeout the remaining letter of credit or bond is insufficient to cover outstanding amounts owed by the Developer to the City under the terms of this agreement, said amounts shall constitute a debt and the Developer immediately shall make full payment in cash for such debt.

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed effective as of the date first above written.

<p>CITY OF AMES, IOWA</p>  <p>By _____ Ann H. Campbell, Mayor</p> <p>Attest By _____ Diane R. Voss, City Clerk</p>	<p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>On this _____ day of _____, 2012, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the _____ day of _____, 2012, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.</p>  <p>_____ Notary Public in and for the State of Iowa</p>
<p>PINNACLE PROPERTIES AMES, L.L.C.</p>  <p>By _____ Keith D. Arneson, Manager</p>	<p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>This instrument was acknowledged before me on _____, 2012, by Keith D. Arneson, Manager of Pinnacle Properties Ames, L.L.C.</p>  <p>_____ Notary Public in and for the State of Iowa</p>

### **COUNCIL ACTION FORM**

**SUBJECT: 2012/2013 WEST LINCOLN WAY INTERSECTION IMPROVEMENTS  
(LINCOLN WAY & DOTSON DRIVE)**

#### **BACKGROUND:**

This project is for constructing turn lanes and installing traffic signals at the Dotson Drive/Lincoln Way intersections. A traffic impact report for South Fork Subdivision justified these improvements. Increased traffic flow from South Fork Subdivision necessitates left-turn lanes at the Lincoln Way approaches to the Dotson Drive intersection to accommodate heavy turning movements. The increased traffic will also warrant the installation of new traffic signals at the Dotson Drive/Lincoln Way intersection. Turn lanes on Lincoln Way will mitigate left-turning, rear-end, and right-angle traffic accidents at this intersection. An existing agreement requires the developer and the City to share equally in the construction cost of these improvements.

Bolton & Menk, the consulting engineers, have completed plans and specifications for the 2012/2013 Program with estimated construction costs of \$750,000. This project received \$500,000 from an Iowa Department of Transportation Traffic Safety Improvement Program grant. The Developer's agreement states that the developer is responsible for 50% of the actual construction costs; the City would pay the other 50% plus any engineering/inspection fees. This leaves an estimated \$125,000 in construction costs contribution required of Mr. Arneson.

Therefore, the estimated construction cost to be funded by the City is also \$125,000. Engineering and construction administration is estimated in the amount of \$50,000, which brings the total estimated City obligation to \$175,000. The Capital Improvements Plan earmarks \$242,500 from the Road Use Tax Fund to be used as the City's local match.

#### **ALTERNATIVES:**

1. Approve the plans and specifications for the 2012/2013 West Lincoln Way Intersection Improvements (Lincoln Way & Dotson Drive) by establishing February 6, 2013, as the date of letting and February 12, 2013, as the date for report of bids.
2. Reject the project.

#### **MANAGER'S RECOMMENDED ACTION:**

Approval of the plans and specifications will initiate the letting process and should allow for the project to be completed by October 1, 2013.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the plans and specifications for the 2012/2013 West

Lincoln Way Intersection Improvements (Lincoln Way & Dotson Drive) by establishing February 6, 2013, as the date of letting and February 12, 2013, as the date for report of bids.