



City Council

Date: July 1, 2019
To: Mayor and Council
Through: Christopher J. Brady, City Manager
From: William J. Jabjiniak, Economic Development Director *WJ*
JD Beatty, Economic Development Project Manager *JB*
Subject: Consider a proposed Development Agreement and Government Property Improvement Lease between City of Mesa and Stone Applications LLC relating to approximately 187 acres of property located at the northwest corner of Elliot Road and Sossaman Road (Council District #6)

Purpose and Recommendation:

To consider the proposed Development Agreement (“DA”) and Government Property Improvements (“GPLET”) Lease between the City of Mesa and Stone Applications LLC (“Company”) relating to approximately 187 acres of property located at the northwest corner of Elliot Road and Sossaman Road (the “Property”). This DA and GPLET Lease facilitates the development of the Property in a manner that will generate substantial monetary and non-monetary benefits for the City, including, among other things: providing for planned and orderly development of the Property consistent with the General Plan and Zoning and otherwise advancing the goals of the General Plan; increasing tax revenues that will arise from or relate to the proposed Project to be constructed on the Property; creating new jobs, and otherwise enhancing the economic welfare of the residents of City.

Staff recommends that the City Council approve, and authorize the City Manager to sign, the following documents:

1. Resolution approving and authorizing the City Manager to sign the Project Documents, which include the proposed Development Agreement, Government Property Improvement Lease, and other documents and agreements as necessary to carry out the provisions of these agreements.

Background:

City Staff and Stone Applications LLC have been engaged in a negotiation process to facilitate the development of approximately 187 acres of property at the northwest corner of Elliot Road and Sossaman Road. A Development Agreement and a GPLET Lease are both critical in the company’s decision to develop, or not develop, the Property. The development of the Property involves substantial capital investments totaling up to \$1,000,000,00.00 or more (the “Project”).

In addition to the DA and Lease, the Company also facilitated the creation of a new Employment Opportunity (EO) Zoning district, which was approved by City Council on April 1st, 2019. The development of this Property would be in accordance with the approved EO

Zoning district, which provides development goals, regulations, standards, and processing guidelines. This approved EO District aims to allow the project to seek a campus-like environment, which is envisioned to be developed in phases with a range of building square footages while providing flexibility for the ultimate site plan configuration.

Discussion:

City Staff have been negotiating with Stone Applications LLC on a Development Agreement and a GPLET Lease, and the following provides a summary of the primary deal points for these documents.

Development Agreement:

The full term of this Development Agreement will be a maximum of 30 years, or a minimum of 25 years, depending on when the GPLET Lease is entered. The DA establishes Performance Milestones for the Company in the first 10 years, which will trigger related obligations by the City primarily relating to the Water Allowance for the Project and Property (discussed in more detail below).

Company/Developer Undertakings in Development Agreement:

1. The Company must meet three Performance Milestones covering Buildings and Capital Investment (“Private Improvements”) in order to receive certain benefits of under the DA:
 - a. First Milestone Date: Before July 1st, 2025, the company must complete construction on a minimum cumulative total of 250,000 square feet of Building Gross Area, and invest a minimum of \$600,000,000 in cumulative Capital Investment in the project.
 - b. Second Milestone Date: Before July 1st, 2027, the company must complete construction on a minimum cumulative total of 500,000 square feet of Building Gross Area, and invest a minimum of \$800,000,000 in cumulative Capital Investment in the project.
 - c. Third Milestone Date: Before July 1st, 2029, the company must complete construction on a minimum cumulative total of 750,000 square feet of Building Gross Area, and invest a minimum of \$1,000,000,000 in cumulative Capital Investment in the project.
 - d. The Milestones may be satisfied cumulatively, should for example, the Company construct above the First Milestone minimums, but not meet the Second Milestone minimum. The delta can still be applied towards the Second Milestone or Third Milestone minimums.
2. New permanent Full-Time Equivalent Positions/Jobs created by the company must receive an annual average compensation of at least \$65,000 per year. This minimum is approximately 174% above the 2019 Maricopa County Median Wage of \$37,352 per year, as published by the Arizona Department of Administration’s Occupational Employment Statistics (OES).
3. Company will complete the required public improvements for Elliot Road and

Sossaman road, which may be eligible for phasing and will dedicate all Right-of-Ways necessary to the City.

4. Company will design and construct the Private Improvements to have the quality, features and finishes of a Class A Industrial Project. Also, while not explicit in this agreement, it is contemplated that the project will be built to a Green Standard, as defined by the state's Computer Data Center Program.
5. The Company must display visible signage on both Elliot Road and Sossaman Road at site entrances that identifies the principal entity/company behind the Project.
6. The Property currently has two existing wells. Under the DA the City consents to their use (subject to acquisition by Company of the needed water rights) of these existing wells (or a replacement well as allowed by the Groundwater Code), for providing service to the Property during scheduled maintenance, emergency outages or implementation of measures under the City Code and Water Shortage Management Plan (WSMP). The wells may also remain in use pursuant to the irrigation grandfathered groundwater rights pertinent to the Property.

City Undertakings in Development Agreement:

1. The Performance Milestones for the Company are directly tied to the City's commitment to a Water Allowance under Arizona Revised Statutes (A.R.S.) § 9-463.06.
 - a. Upon the execution of the Development Agreement, the annual Water Allowance will be 1,120 Acre Feet per Year (AFY). The Allowance will then increase by 1,120 AFY for each of the three Milestones achieved, up to a maximum of 4,480 AFY.
 - b. If the Company misses a Milestone Requirement, it will no longer be eligible for that Water Allowance increase, however, the Company can still meet the following Milestone requirement and be eligible for that associated increase.
2. At the end of the Milestone Dates, depending on use at the Property, the Company can request an amendment to the DA adding additional Milestones to be eligible for additional water supplies, but not exceeding the 4,480 AFY.
3. The Water Allowance in the DA constitutes a commitment by the City under A.R.S. § 9-463.06 for the development of the Project. As stated above, the Water Allowance is subject to completion of the applicable Milestones and is not representative of specific or actual demand for the Project.
4. After the Third Milestone Date, the City will work with the Company to Reconcile the reasonable water demands of the existing and under construction facilities, based on a reasonable engineering analysis, to determine a Maximum Water Allowance, which will cover the Property for the remainder of the term of the GPLET Lease.
5. If the Company identifies additional water supplies, the City agrees in good faith to work with the Company to discuss an amendment, subject to Council approval, which would allow for the City to treat and deliver additional water for the Project.

6. If Company desires to acquire supplemental water supplies, the City agrees to accept, treat and deliver supplemental supplies obtained by the Company, subject to certain limitations. Company may also transfer up to 1,344 acre-feet of long-term storage credits in advance for the City to hold for future delivery to the Project. Company will be responsible for all associated costs in this occurrence.
7. The Company is subject to water shortage measures taken by the City, though under limited circumstances where significant reductions (over 20%) are called for, the City has recognized that implementation of further measures on Company would require a declaration of a moratorium under A.R.S. § 9-463.06.
8. Certain of the provisions of the DA will survive its termination, but only as to the Company or the principal behind the Company (or certain related entities). These include the provision on well use and wheeling supplies by the City.

Government Property Improvements Lease:

1. The proposal would be to enter a 25-year GPLET Lease with Stone Applications, LLC on certain portions of property, with the possibility of limited additions to the leased area in the future.
2. The City would maintain no real commercial interest in the Property, save as landlord pursuant to the details described in the Lease.
3. The Company will pay the City a Net Annual Rental fee of \$10,000 to cover the administration costs for the Lease.
4. As required by A.R.S. § 42-6206, the Tenant (Company) is subject to tax liability under the Government Property Lease Excise Tax provisions of A.R.S. § 42-6201, commonly referred to as GPLET.
5. Company must maintain the property in accordance with the Lease and carry specified amounts of insurance for the Property.
6. The Company and City acknowledge that this Property is NOT within an established Redevelopment Area (RDA) or within a Central Business District (CBD), thus is not eligible for any corresponding abatement of excise taxes.
7. Restrictions on transfer of the Lease are established, which stipulate that there may not be more than two assignees of the Lease and Agreement, and the principal company behind this Project must remain the sole user/tenant of the Property.

Alternatives:

If Council does not approve the DA and Lease as drafted and recommended, they may choose one of the alternatives listed below:

Not Approve Development Agreement and Government Property Improvements Lease: The Council could choose not to approve the Agreement and Lease. In which case, the Project and development will most likely not move forward on the Property, as these documents are critical to their decision to locate in Mesa.

Direct Staff to Modify the Agreements: Council could direct staff to modify the Agreement and Lease. This would require additional negotiations and discussions with the Company, and could also jeopardize the project's anticipated timelines, potentially causing the project not to move forward on the Property.

Take No Action: The Council could choose to take no action or table the item until a future date. The timing of this Project is sensitive and tabling the item could cause a negative impact to the progress of the Project, but exact impact is not known.

Fiscal Impact:

In addition to the aforementioned rental revenue, the City expects to receive substantial direct and indirect economic impact benefits, as well as; increased personal property tax revenue, excise and real property tax revenue, electricity sales tax revenue, construction sales tax revenue, development-related fee revenue and utility revenue, associated with the project

Coordinated With:

The Office of Economic Development has worked closely with the City Attorney's Office, Water Resources, Development Services, Engineering and Transportation on this project.