

RESOLUTION NO. 2761

A RESOLUTION OF THE COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AN ASSURANCE AGREEMENT FOR THE REALIGNMENT/CONSTRUCTION OF APPROXIMATELY THE 2200 TO 2400 BLOCK OF DOLL BABY RANCH ROAD, ACCEPTING REAL PROPERTY ASSOCIATED WITH SUCH REALIGNMENT, AND AUTHORIZING THE TOWN MANAGER AND MAYOR TO SIGN RELATED DOCUMENTS.

(DOLL BABY RANCH ROAD ASSURANCE AGREEMENT)

WHEREAS, the developer of Canyon River Ranch (a development located west of Payson in the unincorporated portion of the County) desires to improve Doll Baby Ranch Road to enhance access to Canyon River Ranch; and

WHEREAS, a segment of the improvements to Doll Baby Ranch Road will be located outside of the Town limits and a segment will be located within the Town; and

WHEREAS, the Town segment is located in approximately the 2200 to 2400 block of Doll Baby Ranch Road ("the Roadway") and will actually realign the Roadway in this area; and

WHEREAS, a four way agreement has been negotiated between the Canyon River Ranch developer, the Town and the two entities that will be dedicating property for the new alignment of the Roadway,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

- Section 1. That the Agreement for Construction between the Town of Payson, Simonton Flat L.L.C., The Floyds, L.L.C., and the Northern Gila County Sanitary District, attached as Exhibit A, is approved in substantially the form attached.
- Section 2. That Debra Galbraith, Town Manager, is authorized to execute the Agreement in substantially the form attached.
- Section 3. That the Town of Payson is willing to accept the right of way and other real property contemplated in the Agreement.
- Section 4. That Kenny J. Evans, Mayor of the Town of Payson, is authorized to execute any documents necessary to accept such right of way and real property.
- Section 5. That further Council action will be required to accept the completed improvements and to abandon the easements for the current Doll Baby Road alignment.

FEB 20 2014 D.S.*

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this _____ day of _____, 2014, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk



Timothy M. Wright, Town Attorney

Exhibit A
to
Resolution 2761

**AGREEMENT FOR THE CONSTRUCTION OF THE
TOWN OF PAYSON SEGMENT OF
DOLL BABY RANCH ROAD**

This agreement for the construction of the realigned segment of Doll Baby Ranch Road within the Town of Payson (Agreement) is entered into this _____ day of _____, 2014 (the Effective Date) by and between Simonton Flat, LLC (“Developer”), The Floyd, LLC (“Floyds”), The Northern Gila County Sanitary District (“NGCSD”), and the Town of Payson (“TOP”) (collectively, the “Parties”).

BACKGROUND

1. Developer desires to improve a portion of West Doll Baby Ranch Road to provide access to its Canyon River Ranch Development. A segment of such improvement is located in the unincorporated area of Gila County and a segment is located within the Town of Payson. See Exhibit 1 depicting the approximate areas of the Gila County segment and the Town of Payson segment.
2. The Town of Payson segment (“the Roadway”) will realign the existing Doll Baby Ranch Road over a portion of Gila County tax parcels 304-13-002E and 304-13-002H. See Exhibit 2 depicting the approximate realignment.
3. Parcel 304-13-002E is owned by Floyds and Parcel 304-13-002H is owned by the NGCSD.
4. Floyds desire a road to be constructed on its property in a location that will benefit future divisions into parcels in accordance with existing R1-35 zoning and NGCSD is agreeable to the Roadway being realigned and constructed on a portion of its property.
5. The TOP requires that financial assurances be posted for realignment and construction of public roadways and improvements.

NOW, THEREFORE, in consideration of the foregoing, the Parties agree as follows:

A. Process Overview.

The Parties agree that the Roadway realignment and construction will generally proceed as follows:

1. Roadway plans will be prepared and approved.
2. Bids for the construction of the Roadway will taken and a contract awarded.
3. An escrow account will be funded and the right of way for the new alignment will be dedicated.
4. The Roadway will be constructed.

5. Following completion of the Roadway and final inspection, the Roadway improvements will be accepted by TOP.
6. Any remaining escrow monies will be released.

B. Developer agrees to:

1. Design the Roadway according to TOP standards for R1-35 zoned property. Such design shall allow continued access for 2400 and 2402 W. Doll Baby Road.
2. Design any water crossing for the Roadway in accordance with Arizona Department of Transportation inspection standards.
3. Obtain plan approval and a right of way permit from TOP to construct the Roadway.
4. Competitively bid the construction of the Roadway and allow any of the Parties access to any and all bid documents and the awarded, signed contract ("the Contract"). C.J. Excavation shall be invited to competitively bid on both the Gila County segment and the TOP segment.
5. Place cash in an escrow account approved by TOP to ensure completion of the Roadway and be responsible for all fees incurred for the escrow account. The cash shall be in an amount equal to (a) the Contract price plus (b) an additional 10% for construction contingencies plus (c) 3% of the Contract price as TOP permit and inspection fees. Any draws on the escrow account shall be approved by TOP based on work completed.
6. Construct the Roadway within six months of plan approval, excluding any delays outside of the control of Developer.
7. Install three 3" conduits as required by APS along the north side of the Roadway and install additional conduits, as required by APS, under the Roadway to serve future parcels.
8. Provide Floyds with evidence that 113% of the Contract price has been deposited in the approved escrow account prior to construction.
9. Construct the Roadway per Exhibit 2 and in accordance with the approved construction plans.
10. Not approve any construction change orders without TOP's consent. TOP may required additional funds to be placed in the escrow prior to approving any such changes.
11. Pay TOP the 3% permit and inspection fee (from the escrow) prior to TOP's final acceptance of the Roadway.

C. Floyds agree to:

1. Dedicate the right of way for the Roadway (as depicted on Exhibit 2) and the parcel located between the new Roadway alignment and the property line (Parcel B on Exhibit 2) to the Town of Payson, including title insurance and payment of escrow fees, upon approval of the Roadway plans and funding of the escrow by Developer.
2. Accept the alignment of the Roadway per Exhibit 2 and in accordance with the approved construction plans.
3. Accept TOP's abandonment of the easement for the current alignment of Doll Baby Road and not require TOP to remove any of the existing roadway improvements.

D. NGCSD agrees to:

1. Dedicate the right of way for the Roadway (as depicted on Exhibit 2) and the parcel between the new Roadway alignment and the property line (Parcel A on Exhibit 2) to the Town of Payson upon approval of the Roadway plans and funding of the escrow by Developer.
2. Work with the owners of 2400 and 2402 W. Doll Baby Ranch Road to provide access from the Roadway to such parcels.
3. Accept TOP's abandonment of the easement for the current alignment of Doll Baby Road and not require TOP to remove any of the existing roadway improvements.

E. TOP agrees to:

1. Review and issue appropriate approvals for the Roadway plans (including improvements and the bridge).
2. Review and approve a Map of Dedication, Right of Way deeds, or other documents pertaining to the dedication of the Roadway right of way to the TOP as depicted in Exhibit 2, when approved in accordance with TOP requirements.
3. Record the Map of Dedication, Right of Way deeds, and/or any other necessary documents with the Gila County Recorder's Office.
4. Issue a right of way permit for construction of the Roadway within town limits.
5. Review and approve monthly draws for completed construction and recommend payment to the contractor, less a 10% retention.
6. Accept the roadway and bridge improvements upon satisfactory completion of construction and receipt of final lien waivers and release any contractor retention amounts.

7. Release any remaining funds in the escrow account to Developer at the completion of the construction project following full payment to the contractor and TOP receiving its 3% permit and inspection fee.

8. Abandon the easement for the current Dolly Baby Ranch Road alignment following completion of the Roadway, all dedications, and the closing of the escrow.

F. Failure to Complete.

If Developer fails to complete the Roadway within six months of plan approval, except as provided in paragraph B(5) above, TOP, at its option may use the escrow funds to complete the Roadway.

G. Other Terms.

1. **Modification.** This Agreement may only be amended or modified by a written instrument executed by all of the Parties.

2. **Dispute Resolution.**

2.1 This Agreement shall be governed and construed in accordance with the laws of the State of Arizona.

2.2 With the written consent of the Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq. Judgment upon any award rendered by the arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona.

2.3 The venue for any such dispute shall be Gila County, Arizona. The Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum.

2.4 No Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action. Each party shall bear its own attorneys' fees without contribution from the other party.

3. **Cancellation (A.R.S. §38-511).** This Agreement is subject to the provisions of A.R.S. § 38-511 which provides for cancellation of contracts by the municipality for certain conflicts of interest.

4. **No Partnership.** This Agreement shall not create any employment relationship, partnership, joint venture, or other arrangement between the Parties.

5. **No Third Party Beneficiaries.** No term or provision of this Agreement is intended to be for the benefit of any person or entity not a party, and no other person or entity shall have any right or cause of action hereunder.

6. Severability. If any portion of this Agreement is found to be invalid, such finding will not affect the validity of the remainder of this Agreement.

7. Authority. The Parties represent that each is fully authorized to execute this Agreement by the individual(s) executing below.

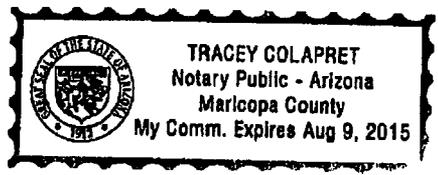
8. Entire Agreement. This Agreement contains the entire agreement between the Parties pertaining to the subject matter. All prior or contemporaneous oral or written agreements concerning the subject matter of this Agreement shall have no effect.

Simonton Flat, LLC

By [Signature] Date 2/5/14

This instrument was acknowledged before me on the 5th day of February, 2014 by Justin Boyland who acknowledged himself to be the owner of Simonton Flat, LLC and that as such, being authorized so to do, signed the name of said company as such officer.

[Signature]
Notary Public My Commission Expires August 9, 2015

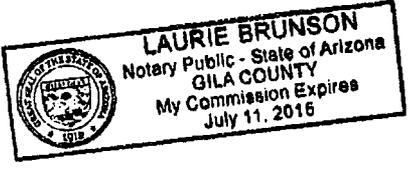


The Floyd, LLC

By [Signature] Date 12-30-13

This instrument was acknowledged before me on the 30 day of December, 2013 by Jarrall Floyd who acknowledged himself to be the President of The Floyd, LLC and that as such, being authorized so to do, signed the name of said company as such officer.

[Signature]
Notary Public My Commission Expires 7-11-15



The Northern Gila County Sanitary District

By _____

Date _____

This instrument was acknowledged before me on the _____ day of _____, 2014 by Joel Goode who acknowledged himself to be the Manager of The Northern Gila County Sanitary District, and that as such, being authorized so to do, signed the name of said company as such officer.

Notary Public

My Commission Expires _____

The Town of Payson

By Debra Galbraith, Town Manager

Date _____

This instrument was acknowledged before me on the _____ day of _____, 2014 by Debra Galbraith who acknowledged herself to be the Manager of The Town of Payson, and that as such, being authorized so to do, signed the name of said company as such officer.

Notary Public

My Commission Expires _____

APPROVAL AS TO FORM

By _____
Timothy M. Wright, Town Attorney

Dated