

# **City of Scottsbluff, Nebraska**

**Monday, December 15, 2014**

**Regular Meeting**

## **Item Subdiv.3**

**Council to consider a Developers Agreement for Premier Estates Subdivision and authorize the Mayor to execute the agreement.**

**Staff Contact: Annie Folck, City Planner**

# Agenda Statement

Item No.

For meeting of: December 15, 2014

**AGENDA TITLE:** Developers Agreement/Contract, Premier Estates, Lots 1-9, Block 1, and Lots 1-3, Block 2, situated in the East half of the SW ¼ of Section 3, T22N, R55W of the 6<sup>th</sup> P.M., Scotts Bluff County, Nebraska.

**SUBMITTED BY DEPARTMENT/ORGANIZATION:** Development Services Department

**PRESENTATION BY:**

**SUMMARY EXPLANATION:** Council may authorize the Mayor to execute a contract that guarantees the improvements that will be installed as part of the Premier Estates development which includes Lots 1-9, Block 1, and Lots 1-3, Block 2, situated in the East half of the SW ¼ of Section 3, T22N, R55W of the 6<sup>th</sup> P.M., Scotts Bluff County, Nebraska. This item was tabled at the December 1 Council meeting. The developer is requesting that the City waive requirements for water, sewer, and paved streets to be installed, while City staff has concerns that such a development with no services and no improvements may be a liability for the City in the future. At Council's request, staff met with Reed on December 5 to discuss options for this agreement. No resolution was reached at this meeting.

**BOARD/COMMISSION RECOMMENDATION:** N/A

- STAFF RECOMMENDATION:** Staff recommends the contract follow the standard template that the City typically uses, along with amended language that allows for improvements to be made to the development in the future as per City Code section 21-1-27. **PLEASE NOTE:** Attached are two versions of a developer's agreement. The first is the agreement that staff is recommending the City require of the developer based on the review of our engineering and legal consultants. The second is the agreement that the developer has submitted for approval. This agreement does not meet the requirements of our code (see attached memo from legal consultants). Also attached is the engineering review of the proposed development, which advises that if we waive certain requirements for a development, it should be with the stipulation that property owners cannot contest future improvement districts in the event the property is ever annexed and included within the Corporate Limits.

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**EXHIBITS**

Resolution     Ordinance     Contract     Minutes     Plan/Map

Other (specify)  Engineering and legal reviews

**NOTIFICATION LIST:** Yes  No  Further Instructions

**APPROVAL FOR SUBMITTAL:** \_\_\_\_\_  
City Manager

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Rev 3/1/99CClerk

# MEMORANDUM

**To:** Planning and Development  
**Date:** November 24, 2014  
**Subject:** Premier Estates Contract for Public Improvements

The proposed Contract for Public Improvements dated November 17, 2014 (“Contract”) between the City of Scottsbluff and Paul Reed Construction & Supply, Inc. (“PRC”) has been reviewed. To begin with the Scottsbluff Municipal Code provisions set forth in Chapter 21-1-10 and 21-1-11 require this, and all, subdivision to comply with Article 1 of Chapter 21 because it is within two miles of Scottsbluff’s corporate limits. The public improvements subject to the Contract are a gravel roadway and storm water detention dikes as set forth in paragraph 1.1. An additional request to waive the requirements of sections 21-1-36; 21-1-37; 21-1-38 and 21-1-39 as set forth in Exhibit “A” relate to infrastructure, including sidewalks, water and sewer requirements listed in Article 1.

A gravel roadway without sidewalks does not meet the requirement found at 21-1-27 through 21-1-34 and 21-1-36. Those sections require paved streets and sidewalks in all subdivisions submitted for City approval that are within the zoning jurisdiction of the City. There is an exception which is found in 21-1-34. The exception provides the City Planner may waive the requirement for paved streets and improvements for areas outside of city limits, if in the judgment of the City Planner, the density of the population and the volume of traffic are sufficiently low that gravel streets are appropriate. It is our understanding the City Planner has not waived the requirement because of the location and density. With no waiver in place, Article 2 requirements are mandatory and the Contract does not comply with the City’s Municipal Code.

## CONTRACT FOR PUBLIC IMPROVEMENTS

This contract is made this 17th day of November, 2014, between **City of Scottsbluff, Nebraska**, a Municipal Corporation, hereafter called "**City**", and **PAUL REED CONSTRUCTION & SUPPLY, INC.**, hereafter called **PRC**.

### RECITALS

Whereas, **PRC** developing real estate described as follows:

**LOTS 1-9, BLOCK 1 AND LOTS 1-3, BLOCK 2, PREMIER ESTATES, A SUBDIVISION OF A PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 22 NORTH, RANGE 55 WEST OF THE 6<sup>th</sup> PRINCIPAL MERIDIAN, SCOTTS BLUFF COUNTY, NEBRASKA**

This real estate will hereafter be called **PREMIER ESTATES**

Whereas, certain improvements in the area which are required by the Scottsbluff Municipal Code to be constructed by the property owner have not been constructed. The parties desire to memorialize their agreement with respect to the construction of these improvements. For that purpose, **PRC** desires to bind itself and its successors in interest to construct the improvements that are listed in Paragraph 1 in accordance with the Scottsbluff Municipal Code as hereinafter provided. **PRC** desires to get a variance from the Scottsbluff Municipal Code allowing **PRC** to proceed without binding **PRC** and its successors in interest to construct other improvement as described on Exhibit "A" attached hereto.

### AGREEMENTS OF THE PARTIES

In consideration of the mutual promises of the parties, it is agreed as follows:

1. By May 1<sup>st</sup>, 2014 **PRC** shall cause to be constructed, all in accordance with the plans and specifications to be approved by the City, which approval will not be unreasonably withheld, the following:

1. Approximately 2,800 linear feet of a 28 foot wide graveled roadway centered in a 52 foot wide Right-Of Way with a 12 foot wide roadside ditch on each side.
2. Storm water detention dikes to detain approximately 1 acre-feet of storm water runoff.

The parties recite their understanding that the quantities described above may change when the final plans and specifications are approved.

2. All improvements described in paragraph 1 of this agreement shall be constructed in accordance with plans and specifications approved by the City and in accordance with all ordinances and codes adopted by the City. PRC warrants such improvements for a period of one year from the date of the acceptance of the improvements.

3. Should PRC fail to construct the improvements described in paragraph 1 of this agreement, the City may construct the improvements. PRC shall reimburse the City for all costs expended by the City in constructing such improvements. The City may at its option, assess all or any part of the unreimbursed cost of the improvements against the properties benefited by the improvements. When any installment of special assessments is unpaid for a period of six (6) months after the same is delinquent, the City may mail written notice to PRC of that fact and demand that PRC pay such installment. If PRC fails to do so within thirty (30) days after such notice is mailed, the City may proceed by appropriate action to enforce PRC's liability as described in this paragraph. In any such action the City shall not be limited to the installments which are currently due but shall be entitled to collect the entire cost of the improvements, plus interest, less sums previously paid. Any forbearance by the City to exercise any right granted to it in this contract shall not be considered a waiver of the City's rights. Any notice under this paragraph shall be deemed properly sent if sent by certified U.S. mail, postage prepaid, to PRC at the following address:

PAUL REED CONSTRUCTION & SUPPLY, INC.  
2970 N. 10<sup>th</sup> STREET  
GERING, NE 69341

4. To secure PRC's liability, PRC agrees to provide security consistent with the policies established by the City. The estimated cost of the improvements described in paragraph 1 of this agreement contemplated by PRC are agreed to be \$30,000. The parties recite their understanding that this is an estimate only and that the actual cost of the improvements may differ from the estimate. The security furnished by PRC will be in the amount of the actual cost of the improvements. It is contemplated that PRC will enter into a contract for the construction of the improvements. The provisions of such contract will determine the actual cost of the improvements. If the security furnished by PRC is a bond or letter of credit, the bond or letter of credit shall provide that upon demand by the City the City shall be paid all sums, which the City is entitled to collect from PRC under this agreement. If the sums collected by the City under the bond or letter of credit are not sufficient to satisfy PRC's liability to the City, PRC will remain liable for the balance. The City may, at its option, assess all or any part of the amounts owed for the improvements described in paragraph 1 hereof and not covered by the bond or letter of credit and not paid for by PRC.

5. PRC is hereby granted a variance from the Scottsbluff Municipal Code requiring the construction of the improvements attached in Exhibit "A".

6. This agreement shall bind, in addition to the parties, the successors and assigns of the respective parties.

7. The parties agree to execute a Memorandum of Contract suitable for filing in the Office of the Register of Deeds of Scotts Bluff County, Nebraska, to give notice of the fact that this Contract has been executed. PRC shall reimburse the City for the costs of filing this Memorandum of Contract.

**IN WITNESS WHEREOF**, the parties have set their hands the day and year first herein written.

CITY OF SCOTTSBLUFF, NEBRASKA

By \_\_\_\_\_  
Mayor

Dated \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

PAUL REED CONSTRUCTION & SUPPLY, INC.

By  \_\_\_\_\_  
Adam Reed  
(Vice-President)

Dated 11/24/2014

-3-

**EXHIBIT “A”**

To Contract for Public Improvements

- A. Paved streets and sidewalks within Right-Of-Ways
- B. City sanitary sewer within Utility Easements or Right-Of-Ways
- C. City water within Utility Easements or Right-Of-Ways
- D. City storm water sewer within Utility Easements or Right-Of-Ways

## CONTRACT FOR PUBLIC IMPROVEMENTS

This contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, between **City of Scottsbluff, Nebraska**, a Municipal Corporation, hereafter called "**City**", and \_\_\_\_\_ [the owner or developer] hereafter called Owner.

### RECITALS

1. [Owner or developer] owns real estate described as follows:

#### [Description]

This real estate will hereafter be called [short name for property, i.e., the Smith tract]

2. Certain improvements in the area which are required by the Scottsbluff Municipal Code to be constructed by the property owner have not been constructed. The parties desire to memorialize their agreement with respect to the construction of these improvements. For that purpose, Owner desires to bind itself and its successors in interest to construct the improvements in accordance with the Scottsbluff Municipal Code as hereinafter provided.

### AGREEMENTS OF THE PARTIES

In consideration of the mutual promises of the parties, it is agreed as follows:

3. By \_\_\_\_\_ [date]\_\_\_\_\_ Owner shall cause to be constructed, all in accordance with the plans and specifications to be approved by the City, which approval will not be unreasonably withheld, the following:

[describe improvements]

The parties recite their understanding that the quantities described above may change when the final plans and specifications are approved. The cost of these improvements shall be paid by the Owner.

4. All improvements described in this agreement shall be constructed in accordance with plans and specifications approved by the City and in accordance with all ordinances and codes adopted by the City. All the improvements shall become the property of the City immediately upon acceptance of the improvements by the City Council. Owner warrants such improvements for a period of one year from the date of the acceptance of the improvements.

5. Should Owner fail to construct the improvements, the City may do so. Owner

shall reimburse the City for all costs expended by the City in constructing such improvements. All improvements described in this agreement shall be constructed in accordance with plans and specifications approved by the City and in accordance with all ordinances and codes adopted by the City. The City may at its option, assess all or any part of the unreimbursed cost of the improvements against the properties benefitted by the improvements. When any installment of special assessments is unpaid for a period of six (6) months after the same is delinquent, the City may mail written notice to Owner of that fact and demand that Owner pay such installment. If Owner fails to do so within thirty (30) days after such notice is mailed, the City may proceed by appropriate action to enforce Owner's liability as described in this paragraph. In any such action the City shall not be limited to the installments which are currently due but shall be entitled to collect the entire cost of the improvements, plus interest, less sums previously paid. Any forbearance by the City to exercise any right granted to it in this contract shall not be considered a waiver of the City's rights. Any notice under this paragraph shall be deemed properly sent if sent by certified U.S. mail, postage prepaid, to Owner at the following address:

[owner address]

6. To secure Owner=s liability, Owner agrees to provide security consistent with the policies established by the City. The estimated cost of the improvements contemplated by Owner are agreed to be \$\_\_\_\_\_. The parties recite their understanding that this is an estimate only and that the actual cost of the improvements may differ from the estimate. The security furnished by Owner will be in the amount of the actual cost of the improvements. It is contemplated that Owner will enter into a contract for the construction of the improvements. The actual cost of the improvements will be determined by the provisions of such contract. If the security furnished by Owner is a bond or letter of credit, the bond or letter of credit shall provide that upon demand by the City the City shall be paid all sums which the City is entitled to collect from Owner under this agreement. If the sums collected by the City under the bond or letter of credit are not sufficient to satisfy Owner=s liability to the City, Owner will remain liable for the balance. The City may, at its option, assess all or any part of the amounts owed for the improvements described in paragraph 3 hereof and not covered by the bond or letter of credit and not paid for by Owner.

7. Owner, for itself and on behalf of all future grantees and owners, covenants and agrees to participate in and not object to the creation of any special improvement districts that may be subsequently created to construct and improve \_\_\_\_\_. It is the intent of Owner that this paragraph bind all future grantees, heirs and owners and that this covenant and contract runs with the land as it touches and concerns the development of \_\_\_\_\_. Owner further agrees that all future transfers or conveyances of lots within \_\_\_\_\_ shall be subject to and conditioned upon a provision in the deed or conveying document that the grantee or new owner will participate in and not object to the creation of any special improvement districts that may be subsequently created to construct and improve \_\_\_\_\_. This paragraph and the covenants herein will not be deemed a waiver of Owner=s, grantee's or

lot owner's right to contest the extent to which it is benefitted by such special improvement district, or to contest the amount of any assessments levied against the Owner=s, grantee's or lot owner's property.

8. This contract shall run with the land and shall bind, in addition to the parties, the successors and assigns of the respective parties.

9. The parties agree to execute a Memorandum of Contract suitable for filing in the Office of the Register of Deeds of Scotts Bluff County, Nebraska, to give notice of the fact that this Contract has been executed. Owner shall reimburse the City for the costs of filing this Memorandum of Contract.

**IN WITNESS WHEREOF**, the parties have set their hands the day and year first herein written.

CITY OF SCOTTSBLUFF, NEBRASKA

y\_\_\_\_\_

Mayor

Dated\_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Owner

Seal

By\_\_\_\_\_  
(Title)

Dated\_\_\_\_\_