City of Benson
City Council Communication

Regular Meeting **July 27, 2015**

To: Mayor and Council Agenda Item # 3

From: William D. Stephens, City Manager

Subject:

Discussion and possible action regarding the agreement between El Dorado Holdings Inc. and the City of Benson, Arizona to satisfy CFD Formation Fees/Costs as charged by Kutak Rock LLC

Discussion:

At the July 13th, 2015 Regular City Council meeting, El Dorado Holdings Inc. agreed to pay all fees/costs charged by Kutak Rock in association with CFD formation. The Mayor issued a request that El Dorado Holdings Inc., present a proposed draft agreement not later than 48 hours after the meeting. El Dorado Holdings Inc. submitted that agreement within the prescribed timeline. The City Attorney, Mr. Paul Loucks, along with Kutak Rock's attorney, Mr. Ken Guckenberger worked with El Dorado Holdings Inc, Ms. Dana Belknap, to create and refine the agreement presented to Council tonight for your review, consideration and approval, if acceptable.

Staff Recommendation:

Council Pleasure

Bill Stephens
City Manager
120 W. 6th Street
PO Box 2223
Benson, AZ 85602

Re: Reimbursement of costs of the City of Benson, Arizona relating to property owned by Eldorado Benson, LLC

Dear Mr. Stephens:

El Dorado Benson, LLC ("Applicant") is the landowner of property within the City of Benson (the "City") and has discussed with the City the formation of a special district or districts (the "District(s)") within the City that would include the Applicant's property. As Applicant, we recognize that the review of the Applicant's application for Districts and potential formation of the Districts will require costs to be expended by the City. In an effort to facilitate the review and to not burden the City with costs that will exceed current budgeted amounts, the Developer will reimburse the City for the costs identified below (the "Reimbursement").

Upon the execution of this Agreement, the Applicant agrees to deposit with the City the sum of $25,000, which sum shall serve as an initial deposit for the Reimbursement costs incurred by the City while processing the Applicant's application (including pre-application work performed after the date of this letter). The initial deposit and all subsequent deposits by the Applicant will be accounted for collectively by the City on a monthly basis. As the City receives billings from its Consultants, it will forward an invoice to the Applicant and deduct the billed amount from the initial deposit. The Applicant agrees to maintain a deposit balance of not less than $10,000 (the "Minimum Balance"). In the event the Applicant fails to maintain the Minimum Balance within ten (10) days after receipt of written notice by the City, the City shall be entitled to take the following action: (i) suspend all further review and (ii) cancel any public hearings scheduled by the City with respect to the review process. As the Applicant's application advances, the Applicant may request a reduction in the deposit amount on file with the City.

The Reimbursement for costs may include (i) costs incurred by the City with legal review by Bond Counsel (Kutak Rock LLP) and by the City Attorney (Mesch Clark) of any District applications, (ii) costs incurred by the City with respect to its retention of any financial advisor or financial consultant, (iii) costs incurred by the City with respect to engineering review associated with the District(s) and (iv) any other costs incurred by the City with respect to the Applicant's District applications that are approved in writing by the Applicant.

It is the intent of the Applicant and the City that the Reimbursement made with respect to this letter agreement would be subject to reimbursement by any subsequent District financing as a costs of formation of the District(s).

Upon receipt of a Reimbursement (which shall include copies of all invoices to be reimbursed), the Applicant shall pay the costs constituting Reimbursement within seven days after the City notifies the Applicant that pending amounts constituting the Reimbursement are due and owing.

To the extent the Applicant has not funded the Reimbursement of such Costs, the City may direct its attorneys and consultants to cease work until such amounts are funded in accordance with the terms of this letter.

If the above sets forth our understanding to your satisfaction, please confirm the terms of by signing, dating and returning the enclosed copy of this letter.

El Dorado Benson, LLC, as Applicant
By: El Dorado Holdings, Inc.

By: _____
Authorized Officer

CONFIRMED AND AGREED TO AS OF THE
DATE INDICATED BELOW:
CITY OF BENSON
By: _____
Authorized Officer

Date: _____