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JUN 14 2007



**Chandler • Arizona**  
*Where Values Make The Difference*

**MEMORANDUM**                      **Public Works Engineering - Council Memo ENG07-050**

**DATE:**            June 14, 2007

**TO:**                MAYOR AND COUNCIL

**THRU:**            W. MARK PENTZ, CITY MANAGER  
                         DANIEL W. COOK, ACTING PUBLIC WORKS DIRECTOR  
                         SHEINA HUGHES, ACTING ASSISTANT PUBLIC WORKS  
                         DIRECTOR/CITY ENGINEER

**FROM:**            CHARLES W. SMITH, ENGINEER

**SUBJECT:**    Approval of Offsite Improvement and Construction Easement Agreement OA07-001 with Dobson Village Investors, LLC, deferring a left turn lane and full median landscape upgrade in Dobson Road across the frontage of the Dobson Village development and accepting a lump sum payment of \$34,341.

RECOMMENDATION:

Staff recommends that Council approve Offsite Improvement and Construction Easement Agreement OA07-001 with Dobson Village Investors, LLC, deferring a left turn lane and full median landscape upgrade in Dobson Road across the frontage of the Dobson Village development and accepting a lump sum payment of \$34,341.

BACKGROUND AND DISCUSSION:

A commercial development, to be known as Dobson Village, is being constructed at the northeast corner of Dobson Road and Frye Road. The developer is Dobson Village Investors, LLC. Associated with this development is a requirement to construct certain offsite improvements to Dobson Road, including a southbound left turn lane into the property and a full median landscape upgrade across the frontage of the property. The City has a planned capital improvement project (Project No. ST0503-201) that will include this portion of Dobson Road. In order to minimize the need for coordination between two contractors and to prevent having traffic on Dobson Road disrupted twice, an agreement has been prepared with the intent of incorporating this work into the City project.

Under the proposed agreement, the developer will make a lump sum payment to cover his obligation for these improvements, and in exchange for this lump sum payment, the developer will be relieved of any further responsibility for this work.

The estimated total cost for completing this work is \$34,341. Under this agreement, that is the amount of the lump sum payment to be made by the developer

FINANCIAL IMPLICATIONS:

A lump sum payment, in the amount of \$34,341, will be received from the developer and held in an interest-bearing account until the time when this improvement is installed. At that time, these funds plus interest will be applied to the cost of the installation.

PROPOSED MOTION:

Move that Council approve Offsite Improvement and Construction Easement Agreement OA07-001 with Dobson Village Investors, LLC, deferring a left turn lane and full median landscape upgrade in Dobson Road across the frontage of the Dobson Village development and accepting a lump sum payment of \$34,341, and authorize the Mayor to sign the Agreement.

Attachments: Agreement No. OA07-001, Location Map

After Recording, Return  
Original Document to:

Chandler City Clerk  
PO Box 4008  
Mail Stop 606  
Chandler, AZ 85244-4008

**OFFSITE IMPROVEMENT  
AND CONSTRUCTION EASEMENT AGREEMENT  
(Lump Sum Payment)  
OA07-001**

This Agreement, effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is entered into by and between the CITY OF CHANDLER, an Arizona municipal corporation (the "City"), and Dobson Village Investors, LLC, an Arizona limited liability company (the "Developer").

RECITALS

A. Chapters 47 and 48 of the Chandler City Code require the Developer to prepare plans and specifications and to construct certain offsite improvements in conformance with municipal standards and requirements.

B. Under Arizona law, the City is required to receive assurances from the Developer that the offsite improvements will be constructed.

C. Under Section 48-12.2 of the Chandler City Code, the Developer is permitted to meet his responsibilities for construction of offsite improvements by participating in an improvement district if one is organized at the discretion of the City and the participating property owners.

D. Under Section 47-11 of the Chandler City Code, the City's Public Works Director is authorized to defer construction of offsite improvements under certain conditions where the construction of such offsite improvements would not be practical at the present time.

E. The Developer has prepared plans and specifications accepted by the City in connection with the required offsite improvements adjacent or related to the following described real property:

**SEE EXHIBIT "A", LEGAL DESCRIPTION, ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.**

F. The City's Public Works Director has determined that it is appropriate to defer construction of required offsite improvements adjacent or related to the above-described real property for a fixed period of time.

G. In lieu of deferring construction of the offsite improvements for a fixed period of time through the posting of a bond or other security, the Developer desires to make a single lump sum payment to the City of the estimated total costs of his improvement obligation (the "Improvement Costs"), thereby making full satisfaction of that obligation.

H. The City is willing to accept such a lump sum payment as full satisfaction of the offsite improvement obligation provided that the Developer also covenants and agrees to grant to the City the right to use the above-described real property to the extent required by the City to complete the construction of the Offsites (described below).

**COVENANTS**

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth below, the parties agree as follows:

1. Except as otherwise provided herein, the Developer is responsible for construction of the following offsite improvements (the "Offsites"), adjacent or related to the above-described property:

- **One southbound left turn lane into the property from Dobson Road.**
- **Full median landscape upgrade in Dobson Road across the frontage of the property.**

2. The cost for the above referenced improvements is Thirty Four Thousand, Three Hundred Forty One Dollars and No Cents (\$34,341.00). This amount has been determined by the City's Public Works Director or designee based upon estimates more fully itemized in Exhibit "B", attached hereto and incorporated by this reference, and is accepted by the Developer.

3. In conjunction with final approval of the Developer's site plan for the above-described real property, the Developer shall pay to the City in a single, lump sum payment, the costs as set out in "Exhibit B". Said payment in full shall constitute full satisfaction of the

Developer's improvement obligation for all of the above-described offsite improvements and the Developer shall then have no further obligation with respect to the design and construction of the above-described improvements or for payment thereof.

4. The monies received by the City shall be placed in a separate fund and accounted for separately and, until such time as the Offsites are completed, shall only be used for the purpose of completing the improvements at a future date determined by the City.

5. The Developer represents and warrants that the Developer is the owner in fee of the above-described real property. As the owner of the above-described real property, the Developer covenants and agrees to grant to the City, at no cost to the City, the right to use the above-described real property to the extent determined by the City to be necessary to complete the construction of the Offsites. This right of use is a temporary use which is to be made available to the City, at the request of the City, during the period of time that the Offsites are constructed. This covenant to grant such use shall run with the land and is intended to survive and be in effect beyond the date that Developer pays in full the above-stated amount.

6. This Agreement shall be construed in accordance with the laws of the State of Arizona.

7. If any court of competent jurisdiction declares any portion or portions of this Agreement invalid, the remaining provisions hereof shall remain in full force and effect provided that the purpose and intent of the parties in entering into this Agreement is met.

8. This Agreement may be enforced by either party in a court of law or equity and the prevailing party may be entitled to recover any costs and expenses including reasonable attorneys' fees. Nothing herein shall prevent or prohibit the City from enforcing this Agreement through such other non-judicial means as may be permitted by law, including, but not limited to, the withholding of building permits.

9. Time is of the essence in this Agreement.

10. In this Agreement, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

11. This Agreement shall run with the land and inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns.

12. Any amendment to this Agreement shall be in writing.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year first stated above.

DOBSON VILLAGE INVESTORS, LLC

By: Jim Riggs

Its: Manager

STATE OF ARIZONA )  
 ) ss  
County of Maricopa )

On this 3<sup>RD</sup> day of MAY, 2007, before me, the undersigned Notary Public, personally appeared JAMES P RIGGS, MANAGER (Title) and being authorized so to do, executed the foregoing Agreement in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Jan Weatherbee  
Notary Public

My Commission Expires:

3/2/2010

CITY OF CHANDLER

By: \_\_\_\_\_  
MAYOR

ATTEST

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY GWB

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**DOBSON VILLAGE**

A PORTION OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND BRASS CAP IN A HANDHOLE AT THE WEST QUARTER CORNER OF SAID SECTION 32 ALSO BEING THE INTERSECTION OF DOBSON ROAD AND FRYE ROAD, FROM WHICH A BRASS CAP FLUSH AT THE INTERSECTION OF DOBSON ROAD AND BOSTON STREET, BEARS NORTH 00 DEGREES 08 MINUTES 02 SECONDS WEST, A DISTANCE OF 1177.32 FEET;

THENCE NORTH 00 DEGREES 08 MINUTES 02 SECONDS WEST ALONG THE MONUMENT LINE OF SAID DOBSON ROAD, A DISTANCE OF 822.21 FEET;

THENCE NORTH 89 DEGREES 53 MINUTES 25 SECONDS EAST LEAVING SAID MONUMENT LINE OF DOBSON ROAD, A DISTANCE OF 85.00 FEET TO THE POINT ON THE PROPOSED EAST RIGHT-OF-WAY LINE OF DOBSON ROAD AND OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE NORTH 89 DEGREES 52 MINUTES 07 SECONDS EAST LEAVING SAID PROPOSED EAST RIGHT-OF-WAY LINE OF DOBSON ROAD, A DISTANCE OF 359.93 FEET;

THENCE SOUTH 00 DEGREES 07 MINUTES 39 SECONDS EAST A DISTANCE OF 462.16 FEET;

THENCE NORTH 89 DEGREES 46 MINUTES 56 SECONDS EAST A DISTANCE OF 200.09 FEET;

THENCE SOUTH 70 DEGREES 07 MINUTES 36 SECONDS EAST A DISTANCE OF 195.03 FEET;

THENCE SOUTH 00 DEGREES 11 MINUTES 36 SECONDS EAST A DISTANCE OF 234.73 FEET TO A POINT ON THE PROPOSED NORTH RIGHT-OF-WAY LINE OF SAID FRYE ROAD;

THENCE SOUTH 89 DEGREES 48 MINUTES 23 SECONDS WEST ALONG SAID PROPOSED NORTH RIGHT-OF-WAY LINE OF FRYE ROAD, A DISTANCE OF 414.47 FEET;

THENCE NORTH 00 DEGREES 08 MINUTES 02 SECONDS WEST A DISTANCE OF 4.00 FEET;

THENCE SOUTH 89 DEGREES 48 MINUTES 23 SECONDS WEST A DISTANCE OF 305.00 FEET;

THENCE NORTH 45 DEGREES 09 MINUTES 50 SECONDS WEST, LEAVING SAID NORTH RIGHT-OF-WAY LINE OF FRYE ROAD, A DISTANCE OF 28.27 FEET TO A POINT ON SAID PROPOSED EAST RIGHT-OF-WAY LINE OF DOBSON ROAD;

THENCE NORTH 00 DEGREES 08 MINUTES 02 SECONDS WEST ALONG SAID PROPOSED EAST RIGHT-OF-WAY LINE OF DOBSON ROAD, A DISTANCE OF 305.00 FEET;

THENCE SOUTH 89 DEGREES 48 MINUTES 26 SECONDS WEST A DISTANCE OF 4.00 FEET;

THENCE NORTH 00 DEGREES 08 MINUTES 02 SECONDS WEST A DISTANCE OF 435.11 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.

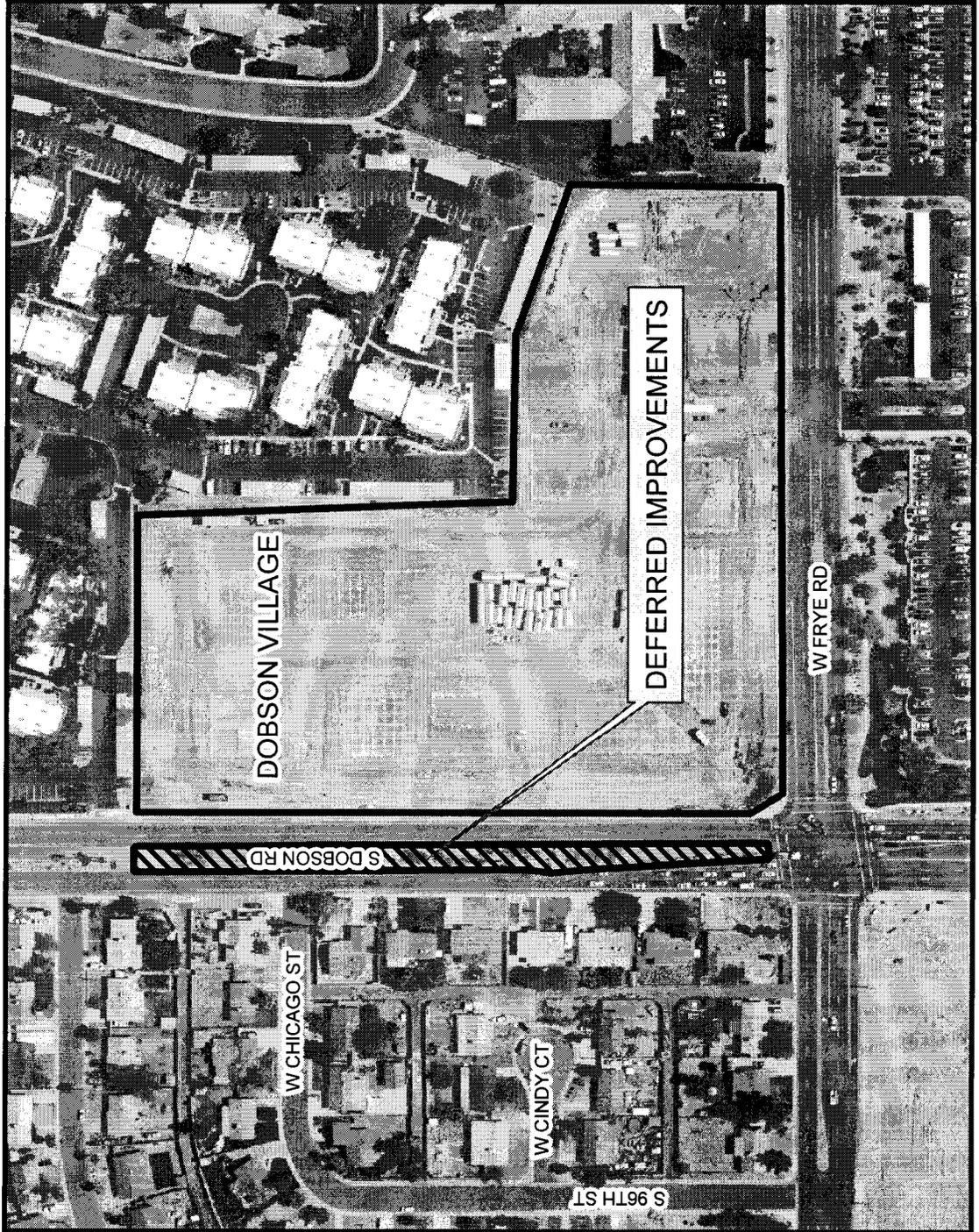
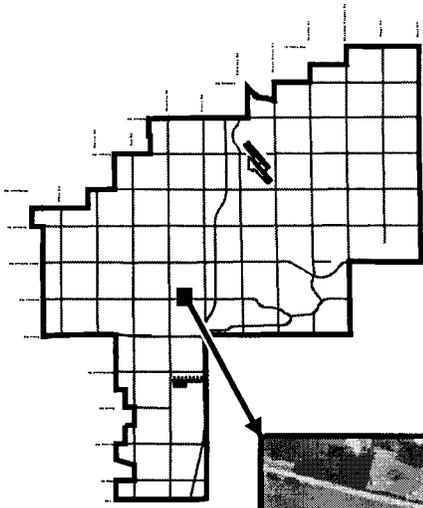
**EXHIBIT "B"**  
**DOBSON VILLAGE**  
**COST BREAKDOWN OF DEFERRED IMPROVEMENTS**

Improvement costs of the offsites is Thirty Four Thousand, Three Hundred Forty One Dollars and No cents, which has been determined as follows:

Description	Est. Qty.	Unit	Unit Price	Extended Price
Removal of single curb	282	LF	5.00	1,410.00
Install single curb	288	LF	14.00	4,032.00
Pavement Replacement	320	SY	35.00	11,200.00
Install pavers	375	SF	6.00	2,250.00
Upgrade Landscape	2,975	SF	\$2.20	6,545.00
			<i>Subtotal</i>	\$25,437.00
			Engineering (15%)	\$3,816.00
			Contract Administration (10%)	\$2,544.00
			Contingencies (10%)	\$2,544.00
			<b><i>Grand Total -</i></b>	<b>\$34,341.00</b>



# LOCATION MAP FOR DOBSON VILLAGE OFFSITE AGREEMENT No. 0A07-001



MEMO NO. ENG07-050

