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MEMORANDUM Public Works Engineering - Council Memo ENG07-051

DATE: June 14, 2007

TO: MAYOR AND COUNCIL

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

FROM: CHARLES W. SMITH, ENGINEER *CWS*

SUBJECT: Approval of Offsite Improvement and Construction Easement Agreement OA07-008 with WIJOMI Development, LLC, deferring a full median in Cooper Road across the frontage of the Vina Solana – Phase 2 development and accepting a lump sum payment of \$21,803.

RECOMMENDATION:
Staff recommends that Council approve Offsite Improvement and Construction Easement Agreement OA07-008 with WIJOMI Development, LLC, deferring a full median in Cooper Road across the frontage of the Vina Solana – Phase 2 development and accepting a lump sum payment of \$21,803.

BACKGROUND AND DISCUSSION:
A residential subdivision, to be known as Vina Solana – Phase 2, is being developed on the east side of Cooper Road, approximately one third of a mile south of Ocotillo Road. The developer is WIJOMI Development, LLC. As part of this project, the developer has an obligation for construction of a full median in Cooper Road across the frontage of the property.

Immediately south of this development is a parcel of land that has not been annexed into the City, and across the frontage of that parcel there is insufficient right-of-way to allow for a smooth transition for traffic if this median were constructed. Rather than require completion of the work now, an agreement has been prepared that will allow for deferral of construction to sometime in the future when conditions are more favorable for completing the installation.

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

The estimated total cost for completing this work is \$21, 803. 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 \$21,803, 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 work.

PROPOSED MOTION:

Move that Council approve Offsite Improvement and Construction Easement Agreement OA07-008 with WIJOMI Development, LLC, deferring a full median in Cooper Road across the frontage of the Vina Solana – Phase 2 development and accepting a lump sum payment of \$21,803, and authorize the Mayor to sign the Agreement.

Attachments: Agreement No. OA07-008, 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)
OA07-008**

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 WIJOMI Development, 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:

VINA SOLANA – PHASE 2: A PORTION OF THE NORTHWEST QUARTER OF SECTION 24 TOWNSHIP 2 SOUTH, RANGE 5 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND A REPLAT OF LOT 14 OF VINA SOLANA, BOOK 736, PAGE 26, RECORDS OF MARICOPA COUNTY, ARIZONA.

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:

Full median in Cooper Road across the frontage of the property.

2. The cost for the above referenced improvements is Twenty One Thousand, Eight Hundred Three Dollars and No Cents (\$21,803.00). 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.

WIJOMI DEVELOPMENT, LLC

By: [Signature]

Its: Managing Member

STATE OF ARIZONA)
) ss
County of Maricopa)

On this 8th day of MAY, 2007, before me, the undersigned Notary Public, personally appeared Mike Silverberg, Managing Member (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.

[Signature]
Notary Public

My Commission Expires:
11-14-07



CITY OF CHANDLER

By: _____
MAYOR

ATTEST

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY GAB

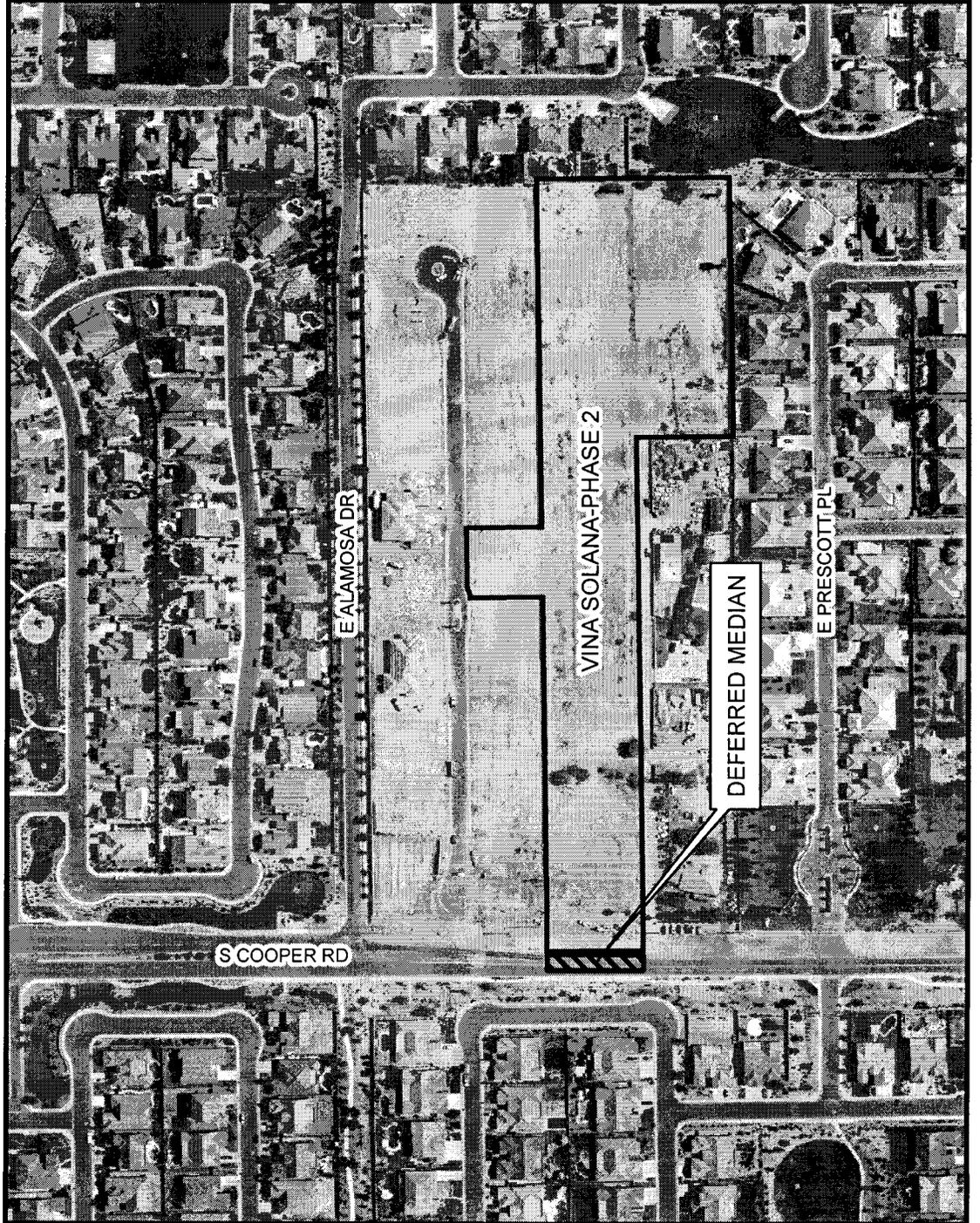
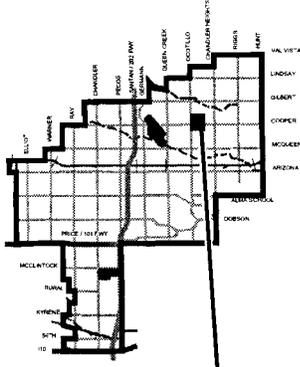
EXHIBIT "B"
VINA SOLANA – PHASE 2
COST BREAKDOWN OF DEFERRED IMPROVEMENTS

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

Description	Est. Qty.	Unit	Unit Price	Extended Price
Sawcut	368	LF	2.00	736.00
Pavement Removals	387	SY	5.00	1,935.00
Install single curb	355	LF	14.00	4,970.00
Pavement Replacement	82	SY	35.00	2,870.00
Install Landscape	2,563	SF	\$2.20	5,639.00
			<i>Subtotal</i>	\$16,150.00
			Engineering (15%)	\$2,423.00
			Contract Administration (10%)	\$1,615.00
			Contingencies (10%)	\$1,615.00
			<i>Grand Total -</i>	\$21,803.00



LOCATION MAP FOR VINA SOLANA-PHASE 2 OFFSITE AGREEMENT NO. OA07-008



MEMO NO. ENG07-051

