



**Chandler • Arizona**  
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#27  
JAN 17 2008

**MEMORANDUM**

**Public Works Engineering Memo PWE08-012**

**DATE:** JANUARY 17, 2008

**TO:** MAYOR AND COUNCIL

**THRU:** W. MARK PENTZ, CITY MANAGER  
RICHARD K. MULLIGAN, ECONOMIC DEVELOPMENT DIRECTOR  
TERI KILLGORE, DOWNTOWN REDEVELOPMENT MANAGER

**FROM:** SHEINA HUGHES, ACTING ASSISTANT PUBLIC WORKS DIRECTOR/  
CITY ENGINEER

**SUBJECT:** Approval of City Participation Agreement CP08-002 with Desert Viking Holdings, LLC, a 65% City share of the cost of constructing improvements in Commonwealth Avenue right-of-way which includes sidewalk, colonnade and pavement improvements at a cost to the City not to exceed \$183,800.

**RECOMMENDATION:**

Staff recommends that Council approve City Participation Agreement CP08-002 with Desert Viking Holdings, LLC, a 65% City share of the cost of constructing improvements in Commonwealth Avenue right-of-way which includes sidewalk, colonnade and pavement improvements at a cost to the City not to exceed \$183,800.

**BACKGROUND AND DISCUSSION:**

Desert Viking Holdings, LLC, is constructing a commercial and retail development at 8 South San Marcos Place, formerly the Bank One Building. As part of the process for receiving approval of the building improvements from the City, the developer requested assistance with improvements to the streetscape adjacent to the building that would be beyond normal development requirements. A City Participation Agreement has been prepared that would provide for this reimbursement.

Under the proposed agreement, the City will reimburse the developer for 65% of the cost of constructing improvements in Commonwealth Avenue right-of-way, which includes sidewalk, colonnade and pavement.

The work covered by this agreement has been substantially completed, and the expenses, including design, construction, and various overhead costs, comes to a total of \$282,707.00 of which the City has agreed to contribute up to a maximum of 65% for total City cost of \$183,800.

FINANCIAL IMPLICATIONS:

Cost: Not to exceed \$183,800

Savings: N/A

Long Term Costs: Minimal. Normal pipeline operation and maintenance.

<u>Account No.</u>	<u>Fund Name</u>	<u>Program Name</u>	<u>CIP Funded</u>	<u>Amount</u>
DT0406.301.101.15	Downtown Capital fund		Non CIP	\$183,800

Costs for this work were evaluated and found to be consistent with those experienced in recent City capital projects.

PROPOSED MOTION:

Move that Council approve City Participation Agreement CP08-002 with Desert Viking Holdings, LLC, a 65% City share of the cost of constructing improvements in Commonwealth Avenue right-of-way which includes sidewalk, colonnade and pavement improvements at a cost to the City not to exceed \$183,800, and authorize the Mayor to sign the Agreement.

Attachments: Agreement No. CP08-002  
Location Map

**AGREEMENT FOR CITY PARTICIPATION IN  
OFFSITE CONSTRUCTION COSTS  
AGREEMENT NUMBER CP08-002**

THIS AGREEMENT, made and entered into this \_\_\_ day of \_\_\_\_\_, 200\_, by and between the CITY OF CHANDLER, a municipal corporation of the State of Arizona, hereinafter designated as "City", and Desert Viking Holdings, LLC ("Developer").

**RECITALS:**

- A. Developer desires to construct offsite improvements as required by the City in connection with development of the following described property:

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

- B. A Benefit Study has been performed which determined the Developer's obligation to provide offsite improvements.
- C. The value of the improvements constructed by Developer exceeds the Developer's offsite improvement obligation.
- D. City funds have been budgeted and are available to pay that part of the cost of construction of these improvements, which exceed the Developer's obligation.
- E. Existing Development will preclude reimbursement of these costs from other property owners.
- F. Developer desires to enter into an agreement with City for City participation for reimbursement of costs incurred by Developer for construction of offsite improvements bordering existing development that does not belong to Developer, whose value exceeds the Developer's offsite improvement obligation.
- G. Chandler City Code Section 47-11.6 and 47-11.7 authorize the City Council to enter into an agreement providing for City participation for reimbursement to Developer from City funds when requested by developers.

NOW, THEREFORE, it is agreed as follows:

1. Developer agrees to construct improvements as required by the Chandler City Code. Construction shall be in accordance with plans approved by the City Engineer.
2. Developer agrees to pay all construction costs including, but not limited to, right-of-way, easement, legal, engineering, and energization, which are required to complete the work. The improvements eligible for cost reimbursement are described as follows: a 65% share of the cost of constructing improvements in Commonwealth Avenue right-of-way which includes sidewalk, colonnade and pavement improvements as shown in Exhibit B.
3. City shall acquire ownership of said improvements, including those eligible for reimbursement, when completed, approved and accepted by written notification to Developer from the City Engineer. Following acceptance, all costs for maintenance and power shall become the responsibility of the City.

4. Should Developer be adjudged bankrupt or make an assignment for benefit of creditors prior to the completion of the construction of the work to be performed under the terms of this Agreement, all rights under the reimbursement provisions hereof, if any, shall be null and void and without force or effect, and facilities constructed prior to bankruptcy become the property of the City in fee simple, free and clear of any and all encumbrances, claims or liens whatsoever of Developer.
5. City Participation. The City's participation in the Project shall be limited to the actual cost of the items included in the Project, up to an amount not to exceed One Hundred Eighty Three Thousand and Eight Hundred dollars (\$183,800.00), and the unit costs for those improvements for which the City is providing reimbursement shall not exceed the unit cost for the entire offsite improvements.
6. Progress Payment. The City shall make payments to the Developer for portions of the Project completed by the contractor and accepted by the City. Progress payments for completed work shall be submitted to the City Engineer. Payment requests shall be signed by the contractor and the engineer for the Developer and accompanied by such supporting documentation as may reasonably be required, including, but not limited to, documentation showing Developer's unit costs for all of Developer's offsite improvements.
7. Inspection. Offsite inspection of the construction will be performed by City staff. Any additional inspection required for the construction shall be performed by the Developer's engineer at the Developer's sole expense.
8. As-Built Drawings. As-built drawings shall be prepared and certified by Developer's engineer prior to final acceptance of the Project by the City.
9. Warranty Bond. The Developer, at his expense, shall provide the City with a warranty bond to guarantee, warrant and/or maintain said improvements for a period of one year after final acceptance of the Project by the City.
10. Enforcement. The City shall be entitled to recover all costs, expenses and fees, including reasonable attorney's fees, incurred by it should litigation be instituted to enforce any term or provision of this Agreement or any portion of the amount payable under this Agreement.
11. Governing Law. This Agreement shall be governed by the laws of the State of Arizona and may be executed in counterparts, each of which shall constitute the original. There are no understandings or agreements except as expressly stated herein.
12. Waiver. No waiver by either party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained.
13. Severability. In the event that any phrase, clause, sentence, paragraph, section, article or portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law, except if the remaining portions of the Agreement do not provide one or both of the parties with the essential consideration for entering into this Agreement.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunder duly affixed and attested by its City Clerk, and the Developer has signed the same, on or as of the day and year first above written.

CITY OF CHANDLER, a municipal corporation of the State of Arizona

ATTEST:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

MDH  
\_\_\_\_\_  
City Attorney

STATE OF ARIZONA            )  
  )ss  
County of Maricopa         )

The foregoing Agreement was acknowledged before me this 9 day of January, 2008 by \_\_\_\_\_, Mayor of the City of Chandler, who acknowledges that he signed the foregoing instrument on behalf of the City of Chandler.

[Signature]  
\_\_\_\_\_  
Notary Public

My Commission Expires:



By: [Signature]  
\_\_\_\_\_  
Its: Member

STATE OF ARIZONA            )  
  )ss  
County of Maricopa         )

On this 9<sup>th</sup> day of January, 2008 before me the undersigned Notary Public, personally appeared Neil K. Ruppel, of \_\_\_\_\_, and that he/she being authorized so to do, executed the foregoing Agreement in the capacity therein stated and for the purposes therein contained.

[Signature]  
\_\_\_\_\_  
Notary Public

My Commission Expires: [Signature]  
\_\_\_\_\_  
OFFICIAL SEAL  
JANECE H. RAY  
NOTARY PUBLIC - State of Arizona  
MARICOPA COUNTY  
My Comm. Expires March 7, 2008

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

LEGAL DESCRIPTION FOR 8 SOUTH SAN MARCOS PLACE

LOTS 14 AND 15, CHANDLER, ACCORDING TO BOOK 5 OF MAPS, PAGE 34, RECORDS OF MARICOPA COUNTY, ARIZONA AND

THAT PORTION OF COMMONWEALTH AVENUE, AS SHOWN ON THE MAP OF TOWNSITE OF CHANDLER, AS PER MAP RECORDED IN BOOK 5, PAGE 34 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, VACATED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 14 OF SAID CHANDLER;

THENCE NORTH 9 FEET;

THENCE WEST PARALLEL TO THE NORTH LINE OF SAID LOT 14, 178 FEET;

THENCE SOUTH 9 FEET TO THE NORTH LINE OF SAID LOT 14;

THENCE EAST ALONG THE NORTH LINE OF LOT 14 TO THE POINT OF BEGINNING

**EXHIBIT "B"**  
**ESTIMATED COST FOR SIDEWALK AND COLONNADE IMPROVEMENTS**

Item No.	Description	Qty	Unit	Unit Price	Extended Price
1	6" Curb and Gutter (MAG Detail 220 Type A)	349	LF	\$14.00	\$4,886.00
2	Curb and Gutter Removal	290	LF	\$2.50	\$725.00
3	Brick Pavers Removal	386	SF	\$3.50	\$1,351.00
4	Driveway Removal	470	SF	\$2.00	\$940.00
5	AC Pavement Removal	988	SY	\$7.00	\$6,916.00
6	Concrete Sidewalk Removal	2183	SF	\$2.00	\$4,366.00
7	24' Concrete Driveway (MAG 251)	550	SF	\$6.50	\$3,575.00
8	ADA Sidewalk Ramps	2	EA	\$1,200.00	\$2,400.00
9	Fire Hydrant Relocate	2	EA	\$3,500.00	\$7,000.00
10	2" A.C. over 6" A.B.C.	681	SY	\$31.50	\$21,451.50
11	Decorative Concrete/Sidewalk (MAG 230)	4330	SF	\$4.25	\$18,402.50
12	Adjust Frame and Cover	3	EA	\$400.00	\$1,200.00
13	Street Lights Remove and Relocate	4	EA	\$3,500.00	\$14,000.00
14	Street Sign Relocate	2	EA	\$300.00	\$600.00
15	Remove Wooden Poles - Northside Of Commonwealth At End Of Canal And Northside Of Commonwealth At Alley - existing wires to be removed by others	2	EA	\$1,000.00	\$2,000.00
16	36" Box Southern Live Oak - Quercus Virginiana	5	EA	\$1,200.00	\$6,000.00
17	3' X 3' Frame Neenah Frame & Grates (Match Ex Style)	5	EA	\$1,200.00	\$6,000.00
18	Phoenix Precast Ribbed Series Planter RS3021 Light Pink Color	8	EA	\$800.00	\$6,400.00
19	15 Gal. Mediterranean Fan Palm - Chamaerops Humilis	4	EA	\$750.00	\$3,000.00
20	15 Gal. Lavender Orchid Vine - Mascagnia Lilacina	4	EA	\$350.00	\$1,400.00
21	Amended Topsoil	4	CY	\$200.00	\$800.00
22	Preemergent Application - 3X	1	LS	\$200.00	\$200.00
23	Connection To Exist 3/4" Line	1	LS	\$500.00	\$500.00
24	3/4" Class 200 PVC	255	LF	\$3.50	\$892.50
25	Bowsmith MI-220 Emitters (3 Per Tree)	15	EA	\$40.00	\$600.00
26	Bowsmith SI-210 Emitters (1 Per Shrub)	8	EA	\$30.00	\$240.00
27	1/4" Poly Tubing	20	YD	\$10.00	\$200.00
28	Misc Risers And Fittings	1	LS	\$1,500.00	\$1,500.00
29	1 1/2" or 2" PVC Sleeve for All Irrigation	275	LF	\$4.00	\$1,100.00
30	Decomposed Granite to Match Existing - Fill for New Areas and disturbed areas	1	LS	\$2,500.00	\$2,500.00
31	10 Footing for Colonnade	10	Each	\$345.00	\$3,450.00

Item No.	Description	Qty	Unit	Unit Price	Extended Price
32	Sidewalk drain scupper	2	Each	\$2,875.00	\$5,750.00
33	6" Concrete road removal	3444	SF	\$4.60	\$15,842.40
34	Steet pavers remove and replace	336	SF	\$25.00	\$8,400.00
35	Waterline removal	1	LS	\$7,050.00	\$7,050.00
36	Colonnade	1	LS	\$64,700.00	\$64,700.00
Construction Subtotal					\$226,337.90

Engineering		LS		\$30,070.00
Permits and Bonds				\$1,200.00
Contingency	10%			\$22,600.00
Carrying Costs supported with documentation	1%			\$2,300.00
Printing and copying expenses				\$200.00
Other Expenses Subtotal				\$56,370.00

<b>Total Costs</b>				<b>\$282,707.90</b>
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<b>Maximum City Participation</b>	65%			<b>\$183,800.00</b>
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**Chandler Blvd.**

**Project Site**

**Arizona Ave.**



## Vicinity Map



**Project Site**

**8 South San Marcos Pl.**