

RESOLUTION NO. 2122-07

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR
AUTHORIZING THE TOWN MANAGER TO NEGOTIATE, EXECUTE, AND
IMPLEMENT THE HAMPTON INN OCCUPANCY AND
LOS AMIGOS ROAD IMPROVEMENT AGREEMENT
(MNS NO. 00-52)**

WHEREAS, Billa Enterprises, LLC (“Owner”), and Bhadare/White Windsor, LLC (“Developer”) wish to undertake construction of the Hampton Inn and Suites (“Hotel Facility”) within the jurisdiction of the Town of Windsor (“Town”); and

WHEREAS, the completion of certain private site improvements, including but not limited to on-site parking facilities, is an essential prerequisite to the orderly and safe beneficial use and/or occupancy of the Hotel Facility, and construction of said on-site private improvements has not been completed; and

WHEREAS, vacation of certain portions of the existing right of way of Los Amigos Road to the parcel of property on which the Hotel Facility is to be constructed is an essential prerequisite to construction of said private site improvements, and said vacation has not been completed; and

WHEREAS, construction by Developer and acceptance by Town of certain public improvements, including but not limited to the realignment of Los Amigos Road and provision of a new bridge across Windsor Creek, are essential prerequisites to vacation of said right of way, and said construction and acceptance have not been completed; and

WHEREAS, the design by the Developer of said public improvements and the review and approval of improvement plans for said improvements by the Town are essential prerequisites to their construction, and said design, review, and approval is anticipated by mid August 2007; and

WHEREAS, notwithstanding the incompleteness of all of the essential and sequential prerequisites to beneficial use and occupancy of the Hotel Facility described above and any uncertainties associated therewith, Owner and Developer desire to proceed with construction of the Hotel Facility at this time, at Owner’s and Developer’s sole and exclusive risks in all respects; and

WHEREAS, the Town desires to accommodate Owner’s and Developer’s request, subject to the condition that any and all construction associated with the Hotel Facility is at the sole and exclusive risk of the Owner and Developer, with no assumption of risk or liability of any kind by the Town;

NOW, THEREFORE, BE IT RESOLVED that the Town Council authorizes the Town Manager to negotiate, execute, and implement the Hampton Inn Occupancy and Los Amigos Road Improvement Agreement (“Agreement”) for the Hampton Inn and Suites (Subdivision MNS 00-52) (“Project”) with the Owner and Developer in order to accommodate Owner’s and Developer’s request that a building permit for the Hampton Inn and Suites (“Hotel Facility”) be

issued prior to completion of the essential and sequential prerequisites to use and occupancy of the Hotel Facility described hereinabove, provided that the following shall be incorporated into said agreement:

1. Said Agreement shall be executed by Town, Developer, and Owner.
2. Said Agreement shall be recorded in the official records of the County of Sonoma and shall be binding upon all parties thereto and their successors and assigns and shall run with the land.
3. Prior to the execution of said Agreement, the Developer shall obtain and provide to the Town copies of the unrecorded executed deeds transferring all underlying ownership of the portion of the existing right of way of Los Amigos Road to be vacated (Areas A and B on Exhibit A) to the same ownership as that of the parcel on which the Hotel Facility is to be constructed, excepting therefrom only those portions of said right of way currently owned by the Town in fee.
4. At the time of vacation of said portion of the existing right of way of Los Amigos Road, the above referenced deeds shall be recorded.
5. Upon vacation of said portion of the existing right of way of Los Amigos Road, the Town shall retain public utility and public access easements over such portions of thereof as the Town Engineer determines necessary for the operation, maintenance, and potential additional installation of public utilities therein and to provide the right of public vehicular traffic that utilizes the portion of existing Los Amigos Road to remain a public roadway (generally shown as Area C on Exhibit A) to traverse the Hotel Facility site through its parking lot, from Area C to the realigned Los Amigos Road. Prior to said vacation, Owner shall grant to the Town such additional public access easements as the Town Engineer determines are necessary to complete the public access route through the Hotel Facility parking lot from Area C to the Hotel Facility driveway onto the realigned Los Amigos Road.
6. Prior to the execution of said Agreement, the Developer shall submit to the Town documentation acceptable to the Town that the proposed design and construction of the Los Amigos Road bridge/culvert is acceptable to all agencies with jurisdiction or potential jurisdiction over said design and construction.
7. Said Agreement shall be fully executed and recorded before the issuance of the Hotel Building Permit and the provisions of said agreement shall be conditions of the Hotel Building Permit.
8. Owner and Developer shall acknowledge that issuance of the Hotel Building Permit and any and all design and/or construction undertaken pursuant thereto is for the sole convenience of Owner and Developer and that Owner and Developer solely assume any and all risks of proceeding with said design and construction in advance of the completion of the essential and sequential prerequisites to use and occupancy of the Hotel Facility described hereinabove.


9. All provisions of the Town's standard Subdivision Improvement Agreement determined by the Town Manager to be necessary and prudent to assure the proper and timely completion of the necessary public and site improvements shall be incorporated into the Agreement as conditions of the Hotel Building Permit to be satisfied prior to beneficial use or occupancy of the Hotel Facility. Performance Bonds and Labor and Materials Bonds to be provided by the Developer shall be in the amount of 100% of the estimated costs of the required improvements, the portion thereof relating to the Windsor Creek bridge being as described below.
10. In the event that Developer fails to construct the required realignment of Los Amigos Road and new Windsor Creek bridge in a timely manner, as determined by the Town, the Town shall have the right to complete said construction, the costs thereof to be paid from the proceeds of the Performance and Materials and Labor Bonds furnished by the Developer. The amounts of said bonds shall be determined so as to provide full funding for this possible outcome. Should the Town complete construction of said improvements pursuant to this provision, in lieu of the Conspan arch culvert system proposed by the Developer, the Town shall have the right, at the Town's sole option, to pursue the Windsor Creek bridge construction utilizing a flat panel bridge system on pile supported abutments, similar to that of the current Windsor Road bridge over Windsor Creek. The Performance and Labor and Materials Bonds furnished by the Developer shall be in amounts sufficient to fully pay for such a potential eventuality, including associated design costs, said amounts to be determined by the Town Engineer.
11. Developer shall pay all applicable fees, including but not limited to Traffic Impact Fees, at the time of issuance of the Hotel Building Permit. Upon completion of the Los Amigos Road realignment and associated Windsor Creek bridge by Developer and acceptance thereof by the Town, Developer shall be eligible for refund of all or a portion of the Traffic Impact Fees paid, in accordance with the provisions of Town Council Resolution No. 985-01 regarding Traffic Impact Fee credits, with respect to those portions of the improvements provided that constitute the Los Amigos Road improvements at Windsor Creek described in the Town's Traffic Impact Fee Update Report, dated January 3, 2000. Administrative provisions appropriate to the implementation of said fee credits shall be incorporated into the Agreement, including bidding and construction requirements necessary to maintain eligibility for such credits
12. No request for any beneficial use or occupancy of the Hotel Facility shall be made or granted, nor shall any such beneficial use or occupancy occur, until all of the following have been completed:
 - a. All required private site improvements, including but not limited to construction of all on-site parking facilities, shall be completed prior to any beneficial use and/or occupancy of the Hotel Facility or request therefor.
 - b. Construction of said private site improvements within the current right of way of Los Amigos Road (Areas A and B on Exhibit A) shall not commence until said right of way has been vacated by the Town.

- c. In order to safely and continuously maintain public traffic, said vacation shall not occur until completion of construction by Developer and acceptance by Town of certain public improvements, including but not limited to the realignment of Los Amigos Road and provision of a new bridge across Windsor Creek.
- d. Construction of said public improvements shall not commence until Developer has completed the design and preparation of improvement plans for said public improvements, said improvement plans have been reviewed and approved by the Town, and all applicable permits have been obtained. Execution of the Agreement shall not occur until approval of said improvement plans by the Town Engineer.

13. Such other provisions as the Town Manager may determine appropriate to provide for orderly implementation of the Project and/or to preserve the interests of the Town shall be incorporated into the Agreement.

PASSED, APPROVED, AND ADOPTED this 15th day of August 2007 by the following vote:

**AYES: COUNCILMEMBERS ALLEN, FUDGE, GOBLE, SALMON AND
MAYOR PARKER**
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE



WARIN J. PARKER, MAYOR

ATTEST:



MARIA DE LA O, TOWN CLERK

Attachment: Exhibit A

