

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

cc: 8C
Amend No. _____

Date prepared: March 16, 2009

Council Meeting Date: April 21, 2009

TO: Carl Swenson, City Manager
FROM: Susan J. Daluddung, Deputy City Manager *Susan J.*
SUBJECT: First Amendment to an agreement with Wal-Mart Stores, Inc.
(LCON 12006)

RECOMMENDATION: Authorize the City Manager to execute the 1st Amendment to the Development Agreement with Wal-Mart Stores, Inc.

SUMMARY:

On October 12, 2006, a development agreement with Wal-Mart Stores, Inc. was executed for the relocation and expansion of the Wal-Mart store in downtown Peoria. As a component to this agreement, Wal-Mart agreed to build additional infrastructure above what was required through zoning, including an additional lane, utility oversizing and Rail/Grand Avenue improvements. In return, the City agreed to repay Wal-Mart, through a sales tax reimbursement for these additional infrastructure costs. Wal-Mart also agreed to other items, most notably, a land exchange which allowed the construction of new Fire station #1 for the City.

In addition, Wal-Mart agreed to a reuse condition for their old structure which required them to spend up to \$400,000 in marketing and improvements to their old site. They were required to have a B level tenant or better within 18 months of the new store opening. This date will occur in May 2009. In the event Wal-Mart did not perform on this, the City was eligible to recapture \$600,000 of pledged sales tax with the following stipulations:

1. The sales tax had to be spent on improvements to the old Wal-Mart property.
2. If the sales tax was not spent on the old Wal-Mart property within 2 years of when the city began recapture of the sales tax, the \$600,000 would revert back to Wal-Mart.

As this project moved forward, several things have occurred that have caused staff to

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# 12006A LIC. # _____
Action Date: _____

reconsider this reuse agreement.

1. Since Wal-Mart is only leasing the facility, the benefit would go primarily to the building owner. They have approximately 12 months left on their lease for the old store.
2. The City has become more interested in the redevelopment of the site versus filling the vacant store with a B level tenant.

At staff's suggestion, Wal-Mart has agreed to pay the City \$450,000, within 30 days of execution of this agreement, in exchange for eliminating the reuse requirement and allowing them to opportunity to capture the \$600,000 in sales tax reimbursements.

The benefit of entering into this new amendment to the development agreement would be:

1. The \$450,000 will not be restricted to any one site and can be applied to any downtown project.
2. The \$450,000 will be a lump sum payment up front to the City.

Wal-Mart has met all of its development obligations and has proven to be a responsive partner. Therefore, staff recommends that the City Council approve this amendment to receive the \$450,000.

FISCAL NOTE: (if applicable)

These funds will be deposited into the City's General Fund to be used for future downtown activities.

ATTACHMENT:

After recording, please return to:

City Clerk
City of Peoria, Arizona
8401 W. Monroe St.
Peoria, Arizona 85345

Peoria (Relo), AZ #1533-03

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement (the "First Amendment") is entered into by and between Wal-Mart Stores, Inc., a Delaware corporation (the "Developer"), and the City of Peoria, AZ, an Arizona charter municipality (the "City"), as of the ___ day of _____, 2009 (the "Effective Date").

RECITALS

Whereas, the City and Developer are authorized to enter into this First Amendment pursuant to A.R.S. § 9-500.05 and City Charter Art. 1 § 3.

Whereas, the City and Developer previously entered into that certain Development Agreement (LCON 12006) dated October 12, 2006 ("Agreement") to further the development of a large retail center on approximately thirty-six (36) acres generally located at the southeast corner of Peoria Avenue and the 79th Avenue alignment (as further described as *Exhibit A*, the "Property", to the Agreement), which retail center has been completed and is open for business.

Whereas, the Developer vacated the property it leases in the vicinity of the northeast corner of 83rd Avenue and Peoria Avenue (as further described as *Exhibit B*, the "Reuse Property", to the Agreement), which was intended to benefit from certain of the terms of the Agreement designed to mitigate the effect of having a large retail project within one-quarter mile of a large vacant building.

Whereas, the Reuse Property has remained vacant and unoccupied since Developer relocated its retail operations to the Property despite Developer's best efforts to re-tenant the Reuse Property as required by Section 1.3 of the Agreement.

Whereas, the City and Developer believe it is unlikely that the Reuse Property will be re-tenanted with a Class A or B tenant as required by Section 1.3 of the Agreement prior to expiration of Developer's lease on the Reuse Property, so desire to amend the Agreement to permit Developer to make an alternative financial contribution to the City's efforts to revitalize the downtown district in lieu of fulfilling all the requirements of Section 1.3 of the Agreement.

Now therefore, the parties agree to amend the Agreement as follows.

LCON12006A

AGREEMENT

1. Section 1.3 entitled Reuse Plan is deleted and is replaced by the following:
 - 1.3. Downtown Revitalization Funds. Developer will pay to the City within thirty (30) days of City Council approval of this First Amendment, the sum of **Four Hundred and Fifty Thousand Dollars (\$450,000)** to be used by the City in its discretion to fund one or more of the City's existing or future downtown revitalization projects. The purpose of these funds is to assist the City in mitigating the adverse effects caused by having a large retail project within one-quarter mile of a large vacant building and to otherwise enhance the appearance and desirability of the downtown area.
2. The exhibits to the Agreement shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.
3. In the event of a conflict between any term or provision of this First Amendment with any term or provision of the Agreement, the terms and provisions of this First Amendment shall prevail and supersede the Agreement. Except as amended by this First Amendment, all other terms and conditions of the Agreement remain in full force and effect without modification.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date and year first above written.

Exhibit A

A Parcel of land being a portion of the Northeast quarter of the Northwest quarter of Section 26, Township 3 North, Range 1 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona being more particularly described as follows:

BEGINNING at the North quarter corner of said Section 26, being a brass cap flush at the intersection of 79th Avenue and Peoria Avenue, from which the Northwest corner of said Section 26, being a nail and tag L.S. 21080 which bears South 87°09'37" West, a distance of 2,654.34 feet;

THENCE South 01°02'27" East, along the East line of the Northwest quarter of said Section 26, a distance of 40.02 feet;

THENCE South 87°09'37" West, along the South line of the North 40.00 feet of said Northwest quarter, a distance of 80.00 feet;

THENCE South 46°55'32" East, a distance of 55.65 feet;

THENCE South 01°02'27" East, a distance of 29.86 feet;

THENCE North 88°57'33" East, a distance of 4.88 feet;

THENCE South 08°14'18" East, a distance of 45.52 feet;

THENCE South 01°02'27" East, a distance of 59.33 feet;

THENCE South 04°52'16" East, a distance of 300.32 feet;

THENCE North 88°57'33" East, a distance of 9.36 feet, to a point on the East line of said Northwest quarter;

THENCE South 01°02'27" East along said East line, a distance of 803.23 feet;

THENCE South 87°10'33" West, a distance of 947.37 feet to a point on the Easterly line of Arizona Department of Transportation drainage easement area No. 4 described in Docket 15534, Page 967, records of Maricopa County, Arizona;

THENCE North 45°15'49" West, along said Easterly line of drainage easement area No. 4, a distance of 349.66 feet to a point of a non-tangent curve which is concave Westerly, from which the radius bears North 74°21'56" West, a distance of 183.00 feet;

THENCE Northerly and Westerly along the arc of said curve, being that right-of-way curve described in area No. 1 of Docket 15534, Pages 967 through 971, records of Maricopa County, Arizona, with a central angle of 46°00'16" and through an arc length of 146.94 feet;

THENCE North 30°22' 12" West, a distance of 186.91 feet;

THENCE North 21°12'41" West, a distance of 82.02 feet to a point on the West line of the Northeast quarter of the Northwest quarter of said Section 26;

THENCE North 01°02'57" West, along said West line, a distance of 633.63 feet to a point 40.00 feet South of the North line of said Northwest quarter;

THENCE North 87°09'37" East, being parallel with and 40.00 feet South of said North line, a distance of 583.93 feet;

THENCE North 01°02'27" West, a distance of 40.02 feet to the North line of said Northwest quarter;

THENCE North 87°09'37" East, along said North line, a distance of 743.20 feet to the POINT OF BEGINNING.

Exhibit B

Lot 4, Peoria Town Center, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona in Book 338 of Maps, Page 17.