



MEMORANDUM Economic Development - Council Memo No. ED15-014

DATE: January 28, 2015

TO: MAYOR AND COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 MARSHA REED, ASSISTANT CITY MANAGER *MR*
 MICAH MIRANDA, ECONOMIC DEVELOPMENT DIRECTOR *MM*

FROM: JAMES SMITH, ECONOMIC DEVELOPMENT PROGRAM MANAGER *JS*

SUBJECT: RESOLUTION NO. 4833 - INFILL INCENTIVE PROGRAM AGREEMENT FOR A PORTION OF EAST VALLEY MALL - WEST OF THE NWC OF ARIZONA AVENUE AND WARNER ROAD – (FORMER FOOD FOR LESS/SWAPSMART AND CURRENT SPOT FREE CARWASH)

RECOMMENDATION: Move to adopt Resolution No. 4833 approving the Agreement with NexMetro Development, LLC, for a portion of East Valley Mall - west of the NWC of Arizona Avenue and Warner Road (Former Food for Less/SwapSmart and current Spot Free Car Wash) in an amount not to exceed \$182,242 and authorizing the Mayor to sign all necessary documents.

BACKGROUND: Resolution No. 4833 authorizes the Mayor to execute an Infill Incentive Plan Agreement between the City of Chandler and NexMetro Development, LLC, to provide financial assistance for the demolition of commercial buildings and other existing infrastructure in preparation for a multi-family housing development. The subject site is a portion of East Valley Mall - located west of the northwest corner of Arizona Avenue and Warner Road. This funding will assist the Developer in removing 66,000 square feet from the commercial market.

This item was originally agendaized for consideration at the January 22, 2015 City Council meeting but ultimately withdrawn at the request of the NexMetro Development, LLC. The concerns necessitating withdrawal from the agenda have been resolved.

DISCUSSION: The Infill Incentive Plan was implemented in 2009 to encourage private redevelopment or reinvestment in older existing retail centers within designated areas of the City that exhibit high vacancy rates and/or are facilities that were constructed at least 15 years ago.

The subject commercial site has struggled in recent years, largely due to the opening of the Loop 101 Price Freeway and the Loop 202 Santan Freeway, which have changed traffic patterns in the area. Also, contributing to the issues in this area were the relocation of national tenants to Chandler Fashion Center and its surrounding power centers as well as the development of additional power centers along the freeways. Together these issues have resulted in a supply of

commercial space that exceeds what is currently viable in the area, resulting in high vacancy rates at existing shopping centers.

The subject site currently consists of a former Food for Less/SwapSmart building and a self-service car wash. This “big box” building has been vacant for several years with few options for commercial reuse due to both its size and the amount of available space in this area. This building does not fit well with the typical footprint of existing grocers or new smaller format stores. Also, because the Wal-Mart one mile west of this site expanded to add groceries several years ago, it is unlikely to be reused for this purpose. In addition, the availability of office space, particularly along the City’s freeway corridors has limited the ability of owners to reuse the space for call center type operations as has happened with other “big boxes.” There is limited potential for an educational use of the building as there is an existing charter school in this center as well as another one-mile west of the subject site. The former Target store that was located at this center closed in February 2014, leaving another “big box” building of over 100,000 square feet vacant.

The proposed demolition and redevelopment of the property is consistent with the intent of the Infill Incentive Plan. The proposed project will eliminate 66,000 square feet from the market, bring 194 new multi-family housing units to the identified Infill Incentive Plan area, and provide additional residents that will help support retail users and additional densities along a rapid transit corridor. The demolition work is expected to commence in late February or early March after the Developer closes on the property and this agreement is fully executed.

NexMetro Development’s total investment in the project is estimated to be approximately \$30.8 million, including the purchase of the land and existing buildings, demolition of the existing structures and infrastructure, and the redevelopment of the site as a multi-family project. The total cost of the demolition is estimated to be \$364,485, and the City’s maximum participation in the project will be \$182,242, representing half of these costs.

The basic terms of this Agreement provide funding to assist NexMetro bring the subject site to a state where it can be redeveloped into a multi-family project, including:

- Demolishing the existing structures, including the former Food for Less/ SwapSmart and the Spot Free car wash,
- Removing parking lot asphalt and concrete, landscaping, and screen walls,
- Abandoning the existing drywells,
- Removing the private street (Mariposa Street) at the northwest portion of the site, which is no longer necessary for access to this development or the adjacent housing development, and
- Eliminating the existing Warner Road driveway to the site, as the primary access to this development will be at the two entrances on Grace Boulevard.

The anticipated benefits to the City of Chandler by participating in this project include:

- Increasing the long-term viability of the surrounding commercial properties and businesses due to the introduction of approximately 290 to 390 new residents (1.5 to 2.0 residents per unit). Actual data from the developer’s previous projects in the Phoenix and

Tucson areas have shown average annual household incomes to be in the \$75,000 - \$85,000 range,

- Bringing additional residential density along a present and potentially expanding rapid transit corridor,
- Removing a significant amount of underperforming commercial space from the market, which may increase demand for remaining buildings of a similar size,
- Providing a dramatic improvement to the property and streetscape, which may spur further reinvestment to the surrounding commercial properties.

FINANCIAL IMPLICATIONS: The City of Chandler will contribute \$177,067 for demolition costs and \$5,175 for development fees for a total of \$182,242. Funding is available in the FY14-15 Economic Development Division Capital Budget for the proposed amount.

PROPOSED MOTION: Move to adopt Resolution No. 4833 approving the Agreement with NexMetro Development, LLC, for a portion of East Valley Mall - west of the NWC of Arizona Avenue and Warner Road (Former Food for Less/Swapsmart and current Spot Free Car Wash) in an amount not to exceed \$182,242 and authorizing the Mayor to sign all necessary documents.

Attachments: Resolution 4833
Infill Incentive Plan Agreement

RESOLUTION NO. 4833

A RESOLUTION OF THE CITY OF CHANDLER, ARIZONA, APPROVING AN AGREEMENT BETWEEN THE CITY OF CHANDLER AND NEXMETRO GRACE, LLC TO PROVIDE INFILL INCENTIVE PLAN FUNDING IN AN AMOUNT NOT TO EXCEED \$182,242 FOR ASSISTANCE IN THE DEMOLITION OF COMMERCIAL STRUCTURES AND OTHER INFRASTRUCTURE LOCATED WEST OF THE NORTHWEST CORNER OF ARIZONA AVENUE AND WARNER ROAD TO PREPARE THE SITE FOR A MULTI-FAMILY RESIDENTIAL PROJECT.

WHEREAS, the City desires to obtain certain commitments from NexMetro Grace, LLC, particularly the demolition of existing commercial buildings and infrastructure and the redevelopment of the site to include multi-family housing, which the City believes are of value to the City; and

WHEREAS, the general public will receive benefit from those certain commitments; particularly additional residents to support the remaining commercial properties and additional density along a rapid transit corridor, and

WHEREAS, the City believes that the improvements will enhance the appearance of the area, bring new economic vitality, contribute to the lowering of commercial vacancy rates and potentially spur additional investment in the area; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chandler, Arizona, hereby approves the Agreement between the City of Chandler and NexMetro Grace, LLC and authorizes the Mayor to execute the Agreement upon confirmation having been received in writing that NexMetro Grace, LLC, has completed the acquisition of title in fee simple to the real property that is the subject of the Agreement.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of _____, 2015.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4833 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2015 and that a quorum was present thereat.

CITY CLERK

INFILL INCENTIVE PLAN AGREEMENT

This Agreement ("**Agreement**") is made this _____ day of _____, 2015 (the "**Agreement Effective Date**"), by and between the City of Chandler, an Arizona municipal corporation, hereafter designated as "**City**", and NexMetro Grace, LLC, an Arizona limited liability company, hereafter designated as "**Owner**".

RECITALS

- A. Owner holds, or will hold, title in fee simple in and to that certain improved, commercial property located west of the northwest corner of Arizona Avenue and Warner Road, which consists of land more particularly described in attached Exhibit "A" and the buildings, structures, and other site improvements located thereon, including without limitation the former Food for Less/SwapSmart building and the Spotfree Car Wash facility (the "**Real Property**"). Owner intends to undertake work to demolish and/or remove existing improvements, the removal of which is necessary to prepare the Real Property for redevelopment as a multi-family housing complex (the "**Demolition Work**"). The Demolition Work is more specifically described in the "**Scope of Work**" attached hereto as Exhibit "B".
- B. In furtherance of the goal set forth in the Chandler General Plan to provide for the redevelopment and/or revitalization of commercial space in developed areas of the municipality, The Chandler City Council adopted the Infill Incentive Plan in February 2009 (the "**Program**"). The Program provides financial incentives for private redevelopment and/or reinvestment in older existing retail centers that are located within a designated area of the municipality and which exhibit vacancy rates greater than city-wide averages or which are at least fifteen (15) years old.
- C. Owner has applied to City and desires to enter into this Agreement in order to have a portion of the costs to be incurred by Owner for the Demolition Work reimbursed by City from funds available under the Program. City has determined that the Demolition Work will assist in the redevelopment of the Real Property, which will help in the creation or retention of jobs or which will otherwise improve or enhance the economic welfare of the inhabitants of the municipality and desires to enter into this Agreement with Owner in order to reimburse a portion of Owner's costs incurred for the Demolition Work.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants contained herein, City and Owner agree as follows:

1. Demolition Work. Owner shall undertake and complete the Demolition Work as described in the Scope of Work in accordance with the following schedule:
 - (a) Owner shall obtain zoning, development plan, plat and other development approvals necessary for the redevelopment of the Real Property and shall obtain all permits needed for the Demolition Work no

later than the 181st day following the Agreement Effective Date; (b) Owner shall complete the Demolition Work no later than the 271st day following the date that the requisite demolition permits are issued by City's Transportation & Development Department; provided, however, that Owner shall use all reasonable efforts to substantially complete the Demolition Work by the 181st day following the date that the requisite demolition permits are issued by City's Transportation & Development Department. If the demolition permits are not obtained or the Demolition Work is not completed within the time periods set forth above (as same may be extended pursuant to Section 1.2), then City may provide a written notice of non-compliance to Owner and if the demolition permits are not obtained or the Demolition Work is not completed, as applicable, within thirty (30) days following Owner's receipt of said notice, then the City's obligations to reimburse Owner's expenses under this Agreement shall terminate and be of no further force or effect.

1.1. Time Extensions. City's Economic Development Director (the "**Director**"), in the Director's sole discretion, and upon a determination that Owner is acting in good faith, may extend for up to an additional 30 days the period by which Owner must obtain development approvals for the Real Property and demolition permits for the Demolition Work and may extend for up to an additional 30 days the period by which Owner must complete Demolition Work.

1.2. Completion of Demolition Work. The Demolition Work shall be deemed completed when City's Transportation & Development Department inspects the Real Property and confirms that the Demolition Work has been substantially completed in accordance with the demolition permits issued for the Demolition Work. If the Demolition Work, as described in the Scope of Work, is being conducted in more than a single phase, the Demolition Work shall be deemed completed for purposes of this Agreement when City's Transportation & Development Department inspects the Real Property and confirms that all phases of the Demolition Work has been substantially completed in accordance with the demolition permits issued for the all phases of the Demolition Work.

2. Reimbursement of Owner's Expenses. In consideration for Owner completing the Demolition Work and provided that Owner satisfies all of the other terms and conditions set forth in this Agreement, City shall reimburse Owner up to the aggregate sum of a \$184,242.00 for certain categories of expenses actually incurred by Owner in completing the Improvements. Reimbursement for any expense category shall be limited to the maximum amounts listed below:

Demolition	\$177,067.00
Development Fees	\$ 5,175.00

Total Reimbursement **\$182,242.00**

3. Encumbrance of Funds. Within five (5) days following the Agreement Effective Date, in order to assure that sufficient funds are available for City to make the reimbursement described in this Agreement, the Director shall cause an amount equal to the total aggregate sum available for reimbursement under this Agreement to be encumbered through the Accounting Division of City's Management Services Department until the 291st day following the date that the building permits are issued for the Improvements. If the Director extends the period stated in paragraph 1 above, the Director shall also arrange a corresponding extension of the encumbrance.
4. Claim for Reimbursement.
 - 4.1. Claim Submittal. Within forty-five (45) days following completion of the Demolition Work, Owner shall submit to the Director a written claim for reimbursement under this Agreement, together with copies of all paid bills, cancelled checks, contractor lien waivers and receipts showing the full cost of and full payment for all of the Demolition Work.
 - 4.2. Release of Payment. Upon receipt of Owner's written claim for reimbursement, the Director shall obtain verification from City's Transportation & Development Department that the Demolition Work has been completed as required by this Agreement. Upon obtaining verification, the Director shall forward a request to City's Accounting Division to disburse a reimbursement check made payable to Owner in the amount agreed upon herein. Provided that the Demolition Work has been completed as required under this Agreement, City's Accounting Division shall issue and deliver the reimbursement check to Owner within forty-five (45) days following City's receipt of a written claim for reimbursement.
5. Review of Improvements. The Director or other representative of City's Economic Development Division may periodically review the progress of the Demolition Work. Any such review is in addition to, and not in place of, any required inspection by City's Transportation & Development Department. All work not in material conformance with the approved drawings and specifications and/or with the Scope of Work shall be immediately remedied by the Owner. Deficient or improper work shall be replaced and made to comply with the approved drawings, specifications and terms of this Agreement.
6. No Interference With Normal Approval Process. This Agreement is not intended to, and should not be construed as, interfering with or modifying in any way, or as constituting a waiver of or release from, the normal procedures and requirements of the City of Chandler for obtaining development approvals

and/or demolition permits necessary for any redevelopment, revitalization or improvement to the Real Property. Owner must still meet all such requirements, meet any required development standards and any development fees, impact fees, plan review/permit fees, buy-ins, and other fees applicable to the Demolition Work and/or the redevelopment of the Real Property in accordance with City's local codes or ordinances. However, to obtain the reimbursement provided for under this Agreement, Owner will be required to meet the Scope of Work even if they exceed the standards that would otherwise be required for the Demolition Work.

7. Failure to Complete Work. If Owner or Owner's contractor fails to complete the Demolition Work in material conformity with the Scope of Work and demolition permits and all terms of this Agreement, the Agreement shall terminate and the financial obligation on the part of City shall cease and become null and void in accordance with the terms of this Agreement.
8. Unrelated Improvements. Nothing herein is intended to limit, restrict or prohibit Owner from undertaking any other work in or about the Real Property which is unrelated to the Infill Incentive Plan or the Scope of Work provided for in this Agreement.
9. Other Grants & Awards. Nothing herein shall prohibit Owner from making application to City for other grants, awards or other benefits under other City programs or from applying for additional grants under this Program.
10. Binding Agreement; Not Running With the Land. The Agreement is binding upon City, Owner and their respective successors, heirs and assignees. However, this Agreement is not one intended to run with the land.
11. Indemnification. Except for breaches or defaults by City under the terms of this Agreement, or violations of law by City, Owner shall defend and hold harmless City, its elected officials, officers, agents and employees from and against all loss, damage, claims, suits, proceedings, costs and expenses (including but not limited to reasonable attorney's fees, costs and experts' fees), arising or resulting from, caused or occasioned by, or related to the Demolition Work, the Scope of Work or Owner's obligations, performance and actions taken or not taken or pursuant to this Agreement.
12. Attorney's Fees. In the event that either party institutes proceedings against the other for a violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall include in this judgment against such party all expenses, including but not limited to reasonable attorney's fees, court costs and witness fees, incurred by such party in connection therewith.
13. Remedies. Upon a breach of this Agreement, the non-breaching party, in any court of competent jurisdiction, by an action or proceeding in equity, may secure rescission of the Agreement, a declaratory judgment, specific

performance of the covenants and agreements herein contained or damages in the amount of the reimbursement obligations set forth above in Section 2 of this Agreement or attorneys' fees obligations set forth above in Section 12 of this Agreement. These shall be the sole remedies available to the non-breaching party. Except as specifically permitted by the terms of this Agreement, monetary damage remedies are hereby expressly excluded. Before any performance failure shall be deemed to be a breach of this Agreement, the non-breaching party shall notify the breaching party in writing of the alleged failure and shall demand performance.

14. Notices. All notices, consents, approvals, and waivers required or permitted hereunder shall be given in writing and shall be effective upon personal delivery or direct facsimile transmission, or two (2) business days after being deposited with the U.S. Postal Service, registered or certified, return receipt requested, postage prepaid, or one (1) business day after being deposited with any commercial air courier or express service. All such items shall be addressed as follows or to such other address or addresses as the parties may from time to time specify in writing delivered as provided in this paragraph 14:

To Owner: NexMetro Grace, LLC
 Josh Hartmann
 2355 E. Camelback Road, Suite 510
 Phoenix, AZ 85016

To City: City of Chandler
 Micah Miranda
 Economic Development Director
 Mail Stop 418, P.O. Box 4008
 Chandler, AZ 85244-4008

15. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. There are no understandings or agreements except as expressly stated herein.
16. Waiver. No waiver by either party of a breach of any terms 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 or condition herein contained.
17. Severability. In the event that any phrase, clause, sentence, paragraph, section, article, or portion of this Agreement shall become illegal, null or void 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.

18. Display of City Funding Promotional Material. Owner shall prominently display a sign or poster identifying the Real Property as receiving City funding. The sign or poster will be provided by City and shall be displayed in a location determined by Owner during the period running from the Agreement Effective Date until a date that is no less than ninety (90) days after final approval and reimbursement is made. Failure to display said sign or poster is a breach of this Agreement, and shall, at the option of the City, make this Agreement null and void if the City provides written notice of noncompliance to Owner and Owner does not display the required signage on the Real Property on or before the fifth (5th) business days following Owner's written receipt of the written notice from the City advising Owner that the signage is not displayed as required under this Agreement and that this Agreement will terminate if the required signage is not displayed on the Real Property within five days following Owner's receipt of the notice.
19. Exhibits. The exhibits referred to herein and attached hereto are incorporated herein by this reference.
20. 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.
21. Counterparts. This Agreement may be executed by the signing in counterparts. The execution of this instrument by each of the parties signing a counterpart hereof shall constitute a valid execution, and this instrument and all of its counterparts so executed shall be deemed for all purposes to be a single instrument.
22. Modification. This Agreement may not be modified unless it is in writing and signed by all parties hereto.
23. Time of Essence. Time is of the essence of this Agreement, and City and Owner hereby agree to perform each and every obligation hereunder in a prompt and timely manner.

IN WITNESS WHEREOF, City and Owner have executed this Agreement as of the date set forth above.

EXHIBIT "A"
Legal Description

Parcel 1, East Valley Town Center II, A repeat of Lots 1 thru 5 inclusive and lot 13 of East Valley Town Center, According to Book 1145 and Page 39, of Maricopa County Maps.

EXHIBIT "B"
Scope of Work

THE SCOPE OF WORK INCORPORATES ALL OF THE PLANS AND SPECIFICATIONS SUBMITTED AS PART OF OWNER'S APPLICATION FOR BENEFITS UNDER THE COMMERCIAL REINVESTMENT PROGRAM AS APPROVED AND ACCEPTED BY CITY, INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

- I. Demolition: Owner shall obtain all necessary permits and perform work to:
 - a. demolish approximately 66,000 square feet of existing buildings, including the former Food for Less/SwapSmart building and the Spot Free car wash,
 - b. remove parking lot asphalt and concrete,
 - c. remove existing landscaping and screen walls,
 - d. abandon existing drywells,
 - e. remove Mariposa Street (private) at the northwest portion of the site, and
 - f. remove the current Warner Road entrance to the site.

All of this work shall be completed in order to prepare the site for redevelopment as a multi-family housing complex.