

#38

MAR 13 2008



Chandler • Arizona
Where Values Make The Difference

MEMORANDUM

Economic Development - Council Memo ED08-025

DATE: MARCH 10, 2008

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER *WMP*
RICH DLUGAS, ASSISTANT CITY MANAGER *RD*
RICHARD K. MULLIGAN, ECONOMIC DEVELOPMENT DIRECTOR *RKM*

FROM: CHRISTINE MACKAY, SR. ECON. DEVELOPMENT SPECIALIST *CM*

SUBJECT: DEVELOPMENT AGREEMENT BETWEEN CITY OF CHANDLER,
OPUS WEST AND CDW CORPORATION

RECOMMENDATION: Staff recommends that the Council adopt Resolution No. 4166 and authorize the Mayor to sign all necessary documents.

BACKGROUND/DISCUSSION: Resolution No. 4166 approves and empowers the Mayor to execute a Development Agreement between the City of Chandler, Opus West and CDW, which allows the City to reimburse CDW through OPUS all development impact, plan check, permit, site development, water/wastewater and other fees typically charged and previously paid by Opus to City for development of the Property.

CDW intends to occupy Opus' existing building at 1850 East Northrop Blvd. in the development known as Chandler Airport Center. CDW's initial occupancy will be 46,872 square feet of the building, which will take place upon the completion of tenant improvements currently under construction. On or about December 1, 2009, CDW will then occupy the second phase of an additional 22,362 square feet for a total occupancy of 69,234 square feet. The total employee count for this project is estimated at 450 new jobs to Chandler.

The terms of the Development Agreement call for the City to pay the costs of building permits and impact fees in an amount up to \$479,703. City will reimburse Opus who will in turn pass the amount through to CDW. Payment of the reimbursement amount from City to Opus shall be tied to the total number of persons employed with CDW at a rate of \$1,066.01 per job until the total reimbursement amount has been paid in full. The first payment will be made upon move-in of CDW, based on the initial employment. The City will then make payments to CDW, through Opus, annually as CDW submits reports to

document the employment increase until December 31, 2012 or the total reimbursement amount has been met.

As a second part of the Development Agreement, City will reimburse Opus the standard Arterial Street Fee Credits (system impacts fees) upon completion of Cooper Road. Upon issuance of their building permit, OPUS paid the City's Arterial Street Impact Fee of \$4.26 per building square foot (\$321,482.44 for this building). Typically, a developer receives credit for the construction of adjacent Arterial Streets with permit issuance. However, Cooper Road is currently under construction and Opus was ready for permit issuance prior to the road being completed and accepted by the City Engineer. Public Works will use the standard City formula to determine these credits at a later time but it is anticipated that these credits will not be less than \$70,000. It is standard practice that these fees would be reimbursed to OPUS upon completion of Cooper Road.

As of this date tenant improvement permits for 1850 East Northrop have been issued and paid by Opus.

Staff recommends approval of Resolution No. 4166.

FINANCIAL IMPLICATIONS: \$479,703 to CDW through OPUS; standard Arterial Street Impact Fee Credits reimbursed to OPUS in an amount not less than \$70,000.

PROPOSED MOTION: Move to adopt Resolution No. 4166 approving the Development Agreement between the City of Chandler, OPUS West and CDW and authorizing the Mayor to sign all necessary documents related to the Development Agreement.

Attachments: Resolution No. 4166
Development Agreement

RESOLUTION No. 4166

**A RESOLUTION OF THE CITY OF CHANDLER, ARIZONA,
APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF CHANDLER, OPUS WEST AND CDW CORPORATION
TO PROVIDE CERTAIN INCENTIVES IN RETURN FOR THE
DEVELOPMENT AND OPERATION OF AN OFFICE
EMPLOYMENT CENTER AT THE SOUTHWEST CORNER OF
SANTAN LOOP 202 AND COOPER ROAD CHANDLER.**

WHEREAS, Opus West owns certain real property located at 1850 E. Northrop Boulevard, Chandler, Arizona, which is being developed to provide office space and other opportunities for businesses and jobs; and

WHEREAS, CDW is interested in leasing space at the Opus West location and in doing so will create new job opportunities in the City of Chandler; and

WHEREAS, the City desires to obtain certain commitments from Opus West and CDW Corporation which the City believes are of great value to the City; and

WHEREAS, the general public will receive benefit from those certain commitments; and

WHEREAS, the City believes that the development will enhance the economic viability of the City by increasing real property tax revenues based on the improvements to the property and by creating jobs to be located within the development.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chandler, Arizona, hereby approves the Development Agreement between the City of Chandler, Opus West and CDW Corporation, and authorizes the Mayor to execute the Agreement.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this 13th day of March, 2008.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4166 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 13th day of March, 2008 and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:



WHEN RECORDED RETURN TO:

Mary Wade, Esq.
Chandler City Attorney
City of Chandler
P.O. Box 4008, MS 602
Chandler, Arizona 85244-4008

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into as of the _____ day of March, 2008 (the “Effective Date”), by and between the CITY OF CHANDLER, a municipal corporation of the State of Arizona (“City”), OPUS WEST CORPORATION, a Minnesota corporation (“Opus”), and CDW CORPORATION, an Illinois corporation (“CDW”). The City, Opus and CDW are each a “Party” to this Agreement and may be referred to herein collectively as “Parties.”

RECITALS

A. WHEREAS, Opus constructed (or, as of the Effective Date, is causing to be constructed) an office building having an address of 1850 East Northrop Boulevard (“Building”) within the project known as Chandler Airport Center (the “Project”), the land upon which such Building is situated being located west of the southwest corner of Cooper Road and SanTan Freeway Loop 202 in the City of Chandler, Arizona, as more particularly described on Exhibit A attached hereto and made a part hereof (the “Property”);

B. WHEREAS, the Building contains approximately 90,911 rentable square feet of space in two stories. It is anticipated that approximately 69,234 rentable square feet of the Building will be leased to CDW (the “CDW Lease”) in a two-phase manner (i.e., CDW will initially occupy approximately 46,872 rentable square feet of space on the second floor of the Building (the “Initial CDW Premises”) and will thereafter (on or about December 1, 2009) occupy approximately 22,362 additional rentable square feet of space on the first floor of the Building (the Initial CDW Premises and the aforementioned additional space are sometimes hereinafter referred to collectively as the “CDW Premises”)) where CDW anticipates at least 450 persons will be employed. CDW does not currently have any offices within the City of Chandler;

C. WHEREAS, Opus is desirous of proceeding with the actions required by City in order to obtain tenant improvement permits for the Initial CDW Premises and to finalize construction on already issued building permits for the remainder of the Building upon the terms and conditions set forth in this Agreement;

D. WHEREAS, City has found and determined that development of the Building and CDW’s anticipated employment of 450 employees in Chandler will enhance the

economic vitality of City by increasing revenues and enhancing employment opportunities, and has offered to reimburse certain City fees and charges previously paid or to be paid by Opus;

E. WHEREAS, City, Opus and CDW are entering into this Agreement pursuant to A.R.S. 9-500.05 and Section 9-500.11. The Parties hereto desire to enter into this Agreement to facilitate development consistent with the General Plan and the Zoning Ordinance of City. The Parties hereto acknowledge that the activities related to the development of the Property are economic development activities within the meaning of the State of Arizona's laws concerning such matters, including but not necessarily limited to A.R.S. 9-500.11, and that all expenditures by City pursuant to this Agreement constitute the appropriation and expenditure of public monies for and in connection with economic development activities; and

F. WHEREAS, City, by Resolution No. 4166, adopted on March 13, 2008, has authorized the execution and performance of this Agreement and has otherwise taken all action required by law to enter into this Agreement and make it binding upon City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and representations set forth herein and in the recitals hereto, City, Opus and CDW agree as follows:

1. Upon the request of Opus or CDW, City shall review tenant improvement plans for the CDW Premises to the greatest extent reasonably possible using City's Expedited Review Process, which shall be agreed upon and executed separately from this Agreement, subject to the application of all applicable laws, including laws involving posting and the conduct of public meetings. Upon City's determination that Opus or CDW has submitted final and complete plans for tenant improvements to the satisfaction of City, City shall issue tenant improvement permits for the improvements to be built therein. Consistent therewith, the City will conduct plan reviews for tenant improvements according to the City's Expedited Review Process for the CDW Premises, provide a single point of contact with City to coordinate timely permitting and hold pre-submittal meetings to reduce the number of reviews required, to ensure timely completion.
2. City agrees to reimburse Opus for development impact, plan check, permit, site development, water/wastewater and other fees typically charged and previously paid by Opus to City for development of the Property (collectively, "City Fees") in amounts, and in a manner, as set forth below:
 - a. In connection with its development of the Project, the master developer, Chandler Airport Center CAC, Inc., an Arizona corporation ("Master Developer"), is causing to be constructed as of the Effective Date certain arterial street improvements along Cooper Road (the "Cooper Road

Improvements”). Unless otherwise agreed in writing by the City and Opus, within ten (10) business days of City’s final acceptance of the Cooper Road Improvements and Master Developer’s delivery to City of as-builts depicting the Cooper Road Improvements, City will reimburse Opus in an amount equal to a minimum of \$70,000.00, and any additional amounts calculated pursuant to the formula set forth in Exhibit B, attached hereto and incorporated herein, for City Fees previously paid in connection with the Cooper Road Improvements (the “Opus Reimbursement Amount”).

- b. CDW anticipates that within the CDW Premises at least 450 persons shall be employed (including employees of CDW and its subsidiaries and affiliates) not later than December 31, 2012 (the “Outside Job Creation Date”). The number of such employed persons may be determined at any time and from time to time prior to the Outside Job Creation Date. In addition to the Opus Reimbursement Amount, and in consideration for the such anticipated job creation at the CDW Premises by CDW, City hereby agrees to reimburse Opus for City Charges (“City Charges”) previously paid by Opus in connection with the development of the Property in an amount equal to \$479,703 (the “CDW Reimbursement Amount) in accordance with paragraph 2c of this Agreement, but in no event prior to the City’s receipt of written notice that (i) the CDW Lease has been executed by each of Opus and CDW and (ii) CDW has taken occupancy of the Initial CDW Premises for purposes of conducting business therein. Opus hereby assigns its right to receive the CDW Reimbursement Amount to CDW and authorizes and directs City to make such payment directly to CDW.
- c. Payment of the CDW Reimbursement Amount from City to Opus shall be tied to the aggregate number of persons employed within the CDW Premises at a rate of \$1,066.01 per job until the CDW Reimbursement Amount has been paid in full. Promptly following CDW’s opening for business within the Initial CDW Premises, CDW will provide Opus and City with written notice of the initial aggregate number of persons employed within the CDW Premises, along with a written request for City’s payment to CDW pursuant to the foregoing assignment of Opus’s right to payment of the portion of the CDW Reimbursement Amount calculated based on such initial employment number. Subsequent reimbursements shall take place in December of each year as CDW provides City and Opus with updated employment counts in the CDW Premises. Within 10 days of City’s receipt of updated employment counts, City shall reimburse such funds to CDW pursuant to the foregoing assignment of Opus’s right to payment. Such reimbursements shall continue yearly through the Outside Job Creation Date or until the total CDW Reimbursement Amount has been paid by City, whichever first occurs.

- d. If for any reason any portion of the CDW Reimbursement Amount is received by Opus, Opus hereby agrees to deliver to CDW any and all portions of the CDW Reimbursement Amount Opus receives from City within 10 days of Opus' receipt of the same. Opus shall have no obligation to deliver any portion of the Opus Reimbursement Amount to CDW.
3. In the event that the Building is vacated by CDW (including its subsidiaries and affiliates) prior to the Outside Job Creation Date, or in the event CDW (and its subsidiaries and affiliates) fails, as of the Outside Job Creation Date, to provide a minimum of 75% of the 450 anticipated employees (i.e., 338 employees), then in either event CDW shall repay to the City the CDW Reimbursement Amount paid by City pursuant to paragraph 2c of this Agreement. The repayment to the City, if applicable, shall be made within thirty days after the Outside Job Creation Date. Opus will in no event be obligated to return any portion of the Opus Reimbursement Amount to City.
4. City agrees to provide municipal services to the Building and the remainder of the Property, including, but not limited to water, sewer, police, fire, and street services, on those terms and conditions provided to City customers generally.
5. This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement is subject pursuant to the provisions of A.R.S. 38-511. This Agreement shall be deemed made and entered into in Maricopa County, Arizona.
6. This Agreement is entered into and effective as of the Effective Date.
7. The recitals set forth in Paragraph A through F, inclusive of this Agreement, and Exhibit A are incorporated in this Agreement by reference as if fully set forth herein.
8. Nothing in this Agreement shall preclude the City from the reasonable exercise of its normal zoning, platting and review processes, except as provided otherwise herein (including specifically Section 1 of this Agreement).
9. Nothing in this Agreement exempts Opus from payment of any construction sales tax or any fees other than those specified in Section 2 of this Agreement.
10. The term of this Agreement shall begin on the Effective Date and continue through and including the Outside Job Creation Date of December 31, 2012, unless earlier terminated due to complete payment of each of the Opus Reimbursement Amount and the CDW Reimbursement Amount as provided pursuant to Sections 2(a), (b) and (c) herein; provided, however, that the City's obligations for the Opus Reimbursement Amount and CDW Reimbursement

Amount, if not already paid in full, and CDW's obligation to repay any amounts pursuant to Section 3, shall survive any expiration or termination of this Agreement.

11. If any term, covenant or condition of this Agreement, or the application thereof, is to any extent held or rendered invalid, it shall be and is hereby deemed to be independent of the remainder of the Agreement and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality shall not affect, impair or invalidate the remainder of the Agreement or any part thereof.
12. The failure of any Party to exercise any right, power or remedy given to it under this Agreement, or to insist upon strict compliance with it, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by either Party of its rights at any time to require exact and strict compliance with all of the terms of this Agreement. The rights or remedies under this Agreement are exclusive of any other rights or remedies which may be granted by law.
13. Unless otherwise specifically provided herein, or unless written notice of a change of address has been previously given pursuant hereto, all notices, demands or other communication given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery or as of the second business day after mailing by United States mail, postage prepaid, by certified mail, return receipt requested, addressed as follows:

To Opus: Opus West Corporation.
2555 East Camelback Road
Suite #800
Phoenix, AZ 85016
Attn: Vice President – Real Estate
Development – Chandler
Airport Center

Copy to: Opus Corporation
2555 East Camelback Road
Suite #800
Phoenix, AZ 85016
Attn: Legal Department

And copy to: Valenzuela & Broadfoot PLC
2398 East Camelback Road
Suite #760
Phoenix, AZ 85016
Attn: Mr. Alexander L. Broadfoot

To CDW: CDW Corporation
200 North Milwaukee Avenue
Vernon Hills, IL 60061
Attn: Chief Financial Officer

Copy to: CDW Corporation
200 North Milwaukee Avenue
Vernon Hills, IL 60061
Attn: Legal Department – General
Counsel

To City: City Manager
Mail Stop 605
P.O. Box 4008
Chandler, AZ 85244-4008

Copy to: City Attorney
Mail Stop 602
P.O. Box 4008
Chandler, AZ 85244-4008

14. If and to the extent that CDW's performance of this Agreement is impaired or delayed by war, fire, casualty, acts of God or other similar causes, then the Outside Job Creation Date shall be equitably extended as necessary to permit CDW the opportunity to restore its employment level in the CDW Premises. Furthermore, in the event that any such war, fire, casualty or acts of God, or other similar causes, results in a termination of the Lease, and as a result, the number of jobs contemplated hereby cannot be retained by CDW (including its subsidiaries and affiliates) at the CDW Premises as of the Outside Job Creation Date, then the reimbursement obligation under Section 3 above shall not be triggered if CDW (and/or its subsidiaries and affiliates) within 24 months after the Outside Job Creation Date establishes a replacement office or offices within the City of Chandler at which 338 or more persons in the aggregate are employed, and the replacement office(s) shall be substituted for the CDW Premises for purposes of applying the terms and conditions of this Agreement.

15. This Agreement constitutes the entire Agreement between the City, Opus and CDW with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. This Agreement may not be changed, modified or rescinded, except in writing, signed by all Parties and any attempt at oral modification of this Agreement shall be void and of no effect. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.

16. In the event any Party fails to comply with any terms, conditions and obligations under this Agreement, which are applicable to such Party within thirty (30) days after receipt of written notice from another Party (an "Event of Default"), such Party shall be deemed to be in default under this Agreement. After the occurrence of such Event of Default, the Parties hereby agree that the Parties shall attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the Mediation Rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator selected by the Parties. In the event the Parties cannot agree upon the selection of a mediator within ten (10) days, then, within five (5) days thereafter, the Parties shall request the presiding judge of the Superior Court of Maricopa County, Arizona to appoint the mediator. The mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to commercial property and development agreements. The cost of any such mediation shall be divided equally between the Parties involved in the mediation. The mediator shall not have the right to award punitive damages. The results of the mediation shall be nonbinding and any Party shall have the right to initiate litigation to enforce the terms and conditions of this Agreement upon the latter of the conclusion of the mediation or ninety (90) days after the Event of Default, subject to any extensions agreed upon by the Parties.

17. Remedies.

a. In the event that the City is in default under this Agreement and fails to cure any such default within the time period described in Section 16 above, and the Parties do not resolve the City's default pursuant to the nonbinding mediation described in Section 16 above, then, in that event and as Opus and CDW's sole and exclusive remedy, Opus and CDW shall have the right to seek specific performance of the City's obligations contained herein or to pursue those remedies detailed in this Agreement.

b. In the event that Opus or CDW is in default under this Agreement and fails to cure any such default within the time period described in Section 16 above, and the Parties do not resolve such default pursuant to the nonbinding mediation described in Section 16 above, then, in that event and as the City's sole and exclusive remedies, the City shall have the right to exercise all available remedies at law or in equity, including its remedies detailed in this Agreement. Each of Opus and CDW shall be liable and responsible only for any breach of this Agreement that it may commit; neither Opus nor CDW shall be liable or responsible for any breach of this agreement by any other Party. Without limiting the foregoing, under no circumstances shall Opus (or any successor owner of the Property other than CDW) be liable for reimbursement or repayment of the CDW Reimbursement Amount, and under no circumstances shall CDW be liable for reimbursement or repayment of the Opus Reimbursement Amount.

18. Except as otherwise provided in Section 2(b) herein, neither Opus nor CDW shall assign any obligation in this Agreement other than to a subsidiary or affiliate of Opus or CDW, respectively, without the City's express written consent, which shall not be unreasonably withheld. In order to be effective, any such assignment must contain an express written agreement and assumption by the assignee agreeing to be liable for the assigning Party's obligations contained herein. Any such assignment shall not relieve the assigning Party of its obligations in this Agreement.
19. In the event of any dispute between the Parties in connection with this Agreement, the Party prevailing in such action or proceeding shall be entitled to recover from the other Party all of its costs and fees, including reasonable attorneys' fees; provided, however, that no such amount shall be awarded, owed or payable until (i) the court in question has made a finding that one or the other party is the "prevailing party" in such proceeding, and (ii) a final, non-appealable order of judgment is entered by a court of competent jurisdiction, or where applicable, the mandate of an appellate court of competent jurisdiction shall issue.
20. No member, agent, representative, official, officer, or employee of any Party shall be personally liable to any Party, or any successor-in-interest, in the event of any default or breach by a Party or for any amount which may become due to another Party or any successor in interest or on any obligation under the terms of this Agreement.
21. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Opus and the City or CDW and the City or Opus and CDW. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
22. Each of the Parties hereto represents and warrants to the other that the individual executing this Agreement on behalf of the respective Parties are authorized and empowered to bind the Party on whose behalf such individual is signing and that this Agreement shall be binding upon such Parties. No later than ten (10) days after the Effective Date, the City will record this Agreement in the Records of Maricopa County Arizona.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement through their representatives duly authorized to execute this document and bind their respective entities to the terms and obligations herein contained on the date and year first written above.

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

ATTEST

CITY CLERK

By: _____
Boyd W. Dunn
Mayor

APPROVED AS TO FORM

CITY ATTORNEY

[SIGNATURES CONTINUED ON NEXT PAGE]

OPUS WEST CORPORATION, a Minnesota corporation

By: [Signature]
Name: JEFF ROBERTS
Title: VICE PRESIDENT OF REAL ESTATE DEVELOPMENT

COUNTY OF MARICOPA)
)ss
State of Arizona)

SUBSCRIBED AND SWORN to before me this 11th day of MARCH, 2008 by Jeff Roberts, in his/her capacity of Vice President of Opus West Corporation.

[Signature]
Notary Public

My Commission Expires:



[SIGNATURES CONTINUED ON NEXT PAGE]

CDW CORPORATION, an Illinois corporation

By *Robert J. Welyki*
Name: Robert J. Welyki
Title: Vice President, Treasurer and Assistant Secretary

COUNTY OF Waukegan)
)ss
State of Illinois)

SUBSCRIBED AND SWORN to before me this 10 day of March, 2008 by
Robert J. Welyki, in his/her capacity of Vice President of CDW
Corporation. Treasurer and Assistant Secretary



Cheryl Allen
Notary Public

My Commission Expires: 2/15/2010

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lot 13B, Lot 13 of Chandler Airport Center – Phase 2, according to Book 962 of Maps, Page 32, Official Records of Maricopa County, Arizona.

EXHIBIT B

ARTERIAL STREET FEE CREDIT METHODOLOGY

Arterial Street Fee Credits to be refunded to the Developer will be calculated as follows:

Credit = (sqft of building*land use)/ total trip generation of entire site * total arterial work/ROW dedications