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SEP 11 2008



MEMORANDUM Economic Development – Council Memo ED09-014

DATE: SEPTEMBER 10, 2008
TO: MAYOR AND COUNCIL
THRU: W. MARK PENTZ, CITY MANAGER
PATRICK MCDERMOTT, ASSISTANT CITY MANAGER
FROM: CHRISTINE MACKAY, ACTING ECONOMIC DEVELOPMENT DIRECTOR
SUBJECT: AMENDMENT TO EXISTING WELLS FARGO DEVELOPMENT AGREEMENT

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 4228 and authorize the Mayor to sign all necessary documents.

BACKGROUND/DISCUSSION: In 2002, the City of Chandler entered into a Development Agreement with Wells Fargo for the Ocotillo Corporate Campus located at the northwest corner of Price and Queen Creek Roads. This Development Agreement called for the construction of approximately 435,000 square feet of office space and the creation of approximately 2,000 jobs, as well as off-site construction on both Queen Creek and Price Roads.

The existing Development Agreement further outlined the conceptual future development of this campus, which is now being modified with a new Preliminary Development Plan that allows for an alternative development that includes a 430,000 square foot service center that may be constructed in two phases on this campus. Furthermore, the amended Development Agreement allows for the campus to expand from the existing plan of 1,250,000 square feet to 1,480,000 square feet. Therefore, it is necessary to amend the existing Development Agreement with the changes required as a result of the approval of the new Preliminary Development Plan for the Service Center.

The basic amended terms of the Agreement are as follows:

- Allows Wells Fargo to modify the existing Development Agreement to construct a Service Center on their Ocotillo Corporate Campus as well as future buildings.
- Provides an assured supply of reclaimed water or other sources in the event reclaimed is not available.
- Provides for continued coordination of the intersection of Old Price and Queen Creek Road to allow for signaled access on the private drive to the north and south side of Queen Creek along Old Price Road.
- City will work with best efforts to provide transit service along Price Corridor.

FINANCIAL IMPLICATIONS

None.

Proposed Motion

Move to adopt Resolution No. 4228 approving the amended Development Agreement between the City of Chandler and Wells Fargo Bank and authorize the Mayor to sign all necessary documents.

RESOLUTION NO. 4228

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING AN AMENDED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CHANDLER AND WELLS FARGO TO PROVIDE CERTAIN INCENTIVES IN RETURN FOR THE DEVELOPMENT AND OPERATION OF A MAJOR OFFICE CENTER AND DATA SERVICE CENTER AT THE NORTHWEST CORNER OF QUEEN CREEK ROAD AND PRICE ROAD IN CHANDLER.

WHEREAS, on August 22, 2002, the Chandler City Council passed and adopted Resolution No. 3558 approving a Development Agreement between City and Wells Fargo in connection with property at the northwest corner of Queen Creek Road and Price Road, which Development Agreement was fully executed and then recorded with the Maricopa County Recorder on September 6, 2002 as Document No. 2002-0915649; and

WHEREAS, the Development Agreement was entered for the purpose of furthering the development of said property in accordance with the zoning and development approvals indicated in Ordinance No. 3389, which was introduced and tentatively approved by Council on August 22, 2002, and which received final approval on September 12, 2002; and

WHEREAS, the original plan of development for the property has been modified by the Preliminary Development Plan approved by Council at its meeting of September 11, 2008 in order to allow construction of a data service center; and

WHEREAS, the Development Agreement needs to be amended in light of the change to the original plan of development and to provide certain incentives in order for the construction of the data service center to occur; and

WHEREAS, the data service center will be of great value to the City and the general public will receive benefit from the presence of the data service center; and

WHEREAS, the City believes that the development of the Wells Fargo property with the data service center 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 Amended Development Agreement between the City of Chandler and Wells Fargo, National Association, in substantially the form as presented by staff, and authorizes the Mayor to execute the Amended Development Agreement.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this _____ day of September, 2008.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4228 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of September, 2008, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY LAB

**CITY OF CHANDLER AND WELLS FARGO BANK, NATIONAL ASSOCIATION
AMENDED DEVELOPMENT AGREEMENT**

This Amended Development Agreement is made as of the ___ day of _____, 2008, by and between the City of Chandler, Arizona, an Arizona Municipal Corporation (the "**City**"), and Wells Fargo, National Association ("**Wells Fargo**").

AMENDED RECITALS

A. The City and Wells Fargo entered into a Development Agreement as of August ___, 2002 and recorded September 6, 2002 at Recording No. 2002-0915649, Official Records of the Recorder of Maricopa County, Arizona (the "**Agreement**" or the "**Development Agreement**").

B. The Agreement pertains to approximately 63 acres of real property located at the northwest corner of Price Road and Queen Creek Road in Chandler, Arizona, the legal description of which is attached hereto as **Exhibit "One"** (the "**Property**")

C. The desire and intention of Wells Fargo under the Agreement is to construct on the Property a project consisting of approximately 1.2 million square feet of office buildings and approximately 50,000 square feet of retail space (the "**Original Development Plan**").

D. Wells Fargo has constructed and currently occupies 2 office buildings consisting of approximately 410,000 square feet described as Phase I under the Agreement.

E. Wells Fargo has designed an alternative plan of development for the Property, which provides for the construction of an operations center consisting of approximately 430,000 square feet to be built in 2 phases (the "**Alternative Development Plan**").

F. The Alternative Development Plan modifies the Project so that it consists of 1.0 million square feet of office buildings, 430,000 square feet of operations center and 50,000 square feet of retail space.

G. The Original Development Plan is reflected in the Development Booklet (defined below) and the conceptual development plan approved as part of the Project Zoning. The Alternative Development Plan is reflected in the New Development Booklet submitted as part of the preliminary development plan for the Wells Fargo Ocotillo Service Center, which was approved, subject to

certain conditions imposed by the City, by the Chandler City Council at its regular meeting on September 11, 2008 (the "Preliminary Development Plan").

H. The City believes that the development of the Property under the Original Development Plan, as modified by the Alternative Development Plan, will enhance the economic viability of the City of Chandler by:

- (i) increasing tax revenues;
- (ii) creating jobs; and
- (iii) causing other desirable economic benefits for the City and its citizens.

I. The City and Wells Fargo have agreed to amend the Development Agreement so that it allows Wells Fargo to construct future phases of the Project as provided under the Original Development Plan and as modified by the Alternative Development Plan.

J. The City acknowledges and agrees that Wells Fargo shall continue to be entitled to enjoy the benefits of the City's approval of the Project Zoning for the Property under the Original Development Plan as modified by the Alternative Development Plan, in accordance with the terms and conditions of the Agreement, and that Wells Fargo shall be entitled to rely upon the assurances of the City contained in the Agreement, as amended hereby.

K. Wells Fargo intends to continue to develop the Property consistent with the Project Zoning approved by the City under Ordinance No. 3389 and in substantial conformance with the Development Booklet, and in substantial conformance with the New Development Booklet, which is referenced in the terms and conditions of the Preliminary Development Plan as approved by the Chandler City Council on September 11, 2008.

L. The Development Agreement as amended hereby is consistent with the City's General Plan.

NOW, THEREFORE, in consideration of the foregoing Amended Recitals and mutual promises set forth herein, the parties hereby agree to amend the Development Agreement as set forth below. Except as expressly amended hereby, the Development Agreement shall remain in full force and effect as heretofore existing.

1.0 Definitions

The terms used herein shall continue to have the same meaning as defined in the Development Agreement, except modified as follows:

1.1 **"Application"** shall have the same meaning as defined in the Development Agreement and in addition shall include Application No. DVR08-0020.

1.2 **"Development Booklet"** shall have the meaning as defined in the Development Agreement, and in the alternative, shall mean the PDP submittal booklet dated June 27, 2008 prepared by RSP Architects which is on file with the City of Chandler Planning Services Division in File No. DVR08-0020.

1.3 **"Effective Date"** shall continue to mean the date on which the original development agreement was executed by the City.

1.4 **"Existing Regulations"** shall exclude City building codes.

1.5 **"New Development Booklet"** shall mean PDP submittal booklet dated June 27, 2008, prepared by RSP Architects, which is on file with the City of Chandler Planning Services Division in File No. DVR08-0020 and which is referenced in the conditions to which the Preliminary Development Plan is subject at the time of its approval by the Chandler City Council on September 11, 2008.

1.6 **"Project"** shall continue to have the same meaning as defined in the Development Agreement and, in the alternative, shall include the Alternative Development Plan.

2.0 Plans and Specifications

2.1 Scope of Development. **Section 2.1** is hereby deleted in its entirety and the following is inserted in lieu thereof:

2.1 Scope of Development. Wells Fargo presently intends to develop on the Property a corporate center in a campus type setting consisting as follows:

Original Development Plan

Office Buildings	1,200,000 SF
Retail	<u>50,000 SF</u>
Total	1,250,000 SF

Alternative Development Plan

Office Buildings	1,000,000 SF
Operations Center	430,000 SF
Retail	<u>50,000 SF</u>
Total	1,480,000 SF

2.2 Phase I. **Section 2.2** is deleted in its entirety and is replaced with new **Sections 2.2, 2.3** and **2.4**:

2.2 Phase I. Phase IA of the Project consists of 2 buildings containing approximately 410,000 square feet of office space as depicted on the Phasing Plan attached to the Development Agreement as **Exhibit "G"**. Phase IA has been built and is being occupied by Wells Fargo.

2.3 Future Phases of Development. Additional phases of the development of the Property under the Original Development Plan, unmodified, are set forth in **Exhibit "C"**, which consists of 3 maps depicting each development phase and the onsite parking improvements and the offsite paving and median improvements to be made during each phase. Additional phases of the development of the Property under the Original Development Plan, as modified by the Alternative Development Plan, are set forth on the phasing plan attached hereto as **Exhibit "C Alternate"** consisting of 3 maps depicting each development phase and the onsite parking improvements and offsite paving and median improvements to be made during each phase.

2.4 Return to Original Development Plan. If Wells Fargo does not proceed with the construction of the Operations Center on the Property pursuant to the Original Development Plan, as modified by the Alternative Development Plan, then, upon written request of Wells Fargo, the City's Planning & Development Director is authorized to direct the Planning Services Divisions to make application to the Planning and Zoning Commission and the Chandler City Council to rescind or revoke the approval of the Preliminary Development Plan and to reinstate the site layout and other provisions of the Original Development Plan, unamended except for those conditions and stipulations included as part of the Project Zoning. Nothing herein shall constitute any obligation of the Planning and Zoning Commission to make a favorable recommendation on such application. Nothing herein shall constitute any obligation of the Chandler City Council to grant such application.

3.0 Zoning, Preliminary Development Plan (PDP) and Final Development Plan

3.1 Zoning. **Section 3.1** and **Subsection 3.1.1** are amended and restated as follows:

3.1 Zoning. The Property is zoned P.A.D. and P.C.O. with P.A.D. overlay as set forth Project Zoning.

3.1.1 Parking. Parking required for the property shall be at a ratio of 5 spaces per 1,000 gross square feet of office or retail space. Parking required for the operations center shall be a minimum of 50 spaces. Wells Fargo may provide more spaces than the minimum requirement.

3.4 Conclusive Effect of City's Approval of Agreement. **Section 3.4** is amended by adding at the end thereof the following:

The parties acknowledge that Wells Fargo began construction of Phase I (410,000 square feet of office space) by January 1, 2005 and completed construction by January 1, 2007. In recognition of the intent of the Agreement to vest the Existing Regulations and development approvals upon timely construction of Phase I of the Project, the above language in this section 3.4 "or after the date of any amendments to this Agreement" shall be deleted from the Agreement.

3.5 Approval of Final Site Development Plans. **Section 3.5** is hereby amended by adding the following new **Subsection 3.5.3**:

3.5.3 In addition to its obligation under Subsection 3.5.2, and subject to the provisions of Subsection 5.6.4, Wells Fargo has agreed to use reclaimed water for the cooling system required for conducting its operations at the Operations Center. Currently, Wells Fargo projects that it will require approximately 340,000 gallons per day of reclaimed water for each phase of operations at the Operations Center, or total requirements of approximately 680,000 gallons per day. These requirements may be adjusted upward or downward after completion of construction and commencement of operations at the Operations Center.

3.6 Vesting; Estoppel. The parties acknowledge that Wells Fargo began construction of Phase I (410,000 square feet of office space) by January 1, 2005 and completed construction by January 1, 2007.

4.0 Wells Fargo Obligations.

4.3 Fees and Taxes. **Section 4.3** is hereby amended by adding the following sentences at the end.

The arterial street development impact fees to be assessed for each phase of the Operations Center shall be based on square footage using the Institute of Transportation Engineers trip generation for institutions, and City's institutional impact fee in effect upon issuance of building permits for that phase of the Operations Center.

For illustration, City's current institutional impact fee is \$0.86 per square foot. The initial phase of the Operations Center is 223,000 gross square feet. If building permits were issued for the initial phase in 2008, the arterial street development fee would be \$191,780 obtained from multiplying 223,000 square feet by \$0.86 per square foot.

5.0 City Obligations.

5.2 Intersection of Queen Creek Road and Old Price Road Alignment. **Section 5.2** is hereby amended by changing January 1, 2007 to January 1, 2009.

5.6 Services. **Section 5.6** is hereby amended by adding the following new **subsections 5.6.4** and **5.6.5**.

5.6.4. Assurance of Sufficient Capacity of Reclaimed Water Services.

5.6.4.1 The City assures Wells Fargo sufficient capacity of reclaimed water to serve the Property at buildout under the Original Development Plan as modified by the Alternative Development Plan. City acknowledges that, under the Alternative Development Plan, the Project at full buildout may require City to deliver up to 800,000 gallons per day of reclaimed water. Approximately one-half of this amount of water will be required for the first phase of construction of the Operations Center. Of this 800,000 gallons per day, 700,000 gallons per day will be used by Wells Fargo to satisfy

demands for the cooling system required for the operation of computer and electronic equipment to be located, operated and maintained in the Operations Center. The remaining 100,000 gallons per day will be used to irrigate the landscaping. If available, City agrees upon request of Wells Fargo to deliver more than 800,000 gallons per day of reclaimed water.

5.6.4.2 The City warrants that Wells Fargo is a developer required to use reclaimed water as a condition of the development of the Property as provided in Chapter 53, Section 53-3.1 of the City Code.

5.6.4.3 City acknowledges that the requirement in Chapter 53, Section 53-14 of the City Code for large volume users of reclaimed water to construct on-site water storage structures with a capacity of three (3) days of average daily flow applies only to reclaimed water to be used to irrigate landscaping. Since Wells Fargo projects an average daily demand of reclaimed water for landscaping at 100,000 gallons per day, Wells Fargo is not required to construct the on-site water storage structure.

5.6.4.4 City agrees on an emergency basis to deliver up to 800,000 gallons per day of potable water to the Property in the event of a temporary interruption in the City's delivery of reclaimed water. In order to assure Wells Fargo of an uninterrupted supply of water to serve Wells Fargo's demands for the cooling system for the Operations Center, the City shall construct, maintain and repair on the Property wells and related motors, pumps and other equipment necessary to produce and deliver collectively up to 700,000 gallons per day (560 gallons per minute) (the "Well Facilities"). Wells Fargo shall reimburse the City for the costs of construction of the Well Facilities upon completion of construction and within thirty (30) days after City's presentation of an invoice for such costs, together with supporting invoices from all City contractors performing work and supplying pumps, motors and other equipment. City shall perform regular testing, maintenance and repair of the Well Facilities and submit invoices from time to time to Wells Fargo for reimbursement within thirty (30) days, together with testing results and repair and maintenance logs. Wells Fargo shall provide a back-up power generating source for the Well Facilities. Wells Fargo acknowledges that it is not necessary to treat the water produced from the Well Facilities. Wells Fargo shall pay City for the water produced by the Well Facilities ____ percent of City's prevailing potable water rates.

5.6.4.5 The price of delivery of reclaimed water to the Property shall be as set forth on the Price Schedule of Reclaimed Water attached hereto as **Exhibit _____**, as City may adjust from time to time. In no event shall the price for delivery of reclaimed water to Wells Fargo exceed the price charged by the City for delivery of reclaimed water to any other large volume reclaimed water user as defined in Chapter 53, Section 53-1, Reclaimed Water Service of the City Code.

5.6.5 Public Bus Service to the Property. City acknowledges that it is a high priority to provide public bus service along the Price Road Employment Corridor, including the Project. City shall use reasonable efforts to commence providing regular public bus service to the Project on or before October 1, 2009. City agrees that no other employment area within the city limits will be accorded a higher priority than the Price Road Employment Corridor for providing public bus service. At the request of Wells Fargo, City agrees from time to time to provide written reports to Wells Fargo as to City's progress in making bus service available to the Price Road Employment Corridor. Nothing contained in this Section shall be deemed to obligate City to provide bus service on or before the above date.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

ATTEST:

CITY OF CHANDLER, ARIZONA
an Arizona Municipal Corporation

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY *GAB*

WELLS FARGO BANK, National Association

By: _____
Donald E. Dana, Executive Vice President

By: _____
Leo J. Bauman, Vice President

STATE OF CALIFORNIA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200_, by Donald E. Dana, Executive Vice President of Wells Fargo Bank, National Association, for and on behalf thereof.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 200_, by Leo J. Bauman, Vice President of Wells Fargo Bank, National Association, for and on behalf thereof.

Notary Public

My Commission Expires:
