

Staff Summary Report

Council Meeting Date: 11/06/08

Agenda Item Number: 20

SUBJECT: Request approval of the first amendment to extend the term of the Development and Disposition Agreement (C2007-37) between the City of Tempe and GDG Partners LLC to one year after the execution of the Lease authorized in the modification agreement.

DOCUMENT NAME: 20081106cdnr02 **RIO SALADO MASTER PLAN (0112-07-03)**

COMMENTS: N/A.

PREPARED BY: Nancy Ryan, Rio Salado Project Manger (x. 8096)

REVIEWED BY: Chris Salomone, Community Development Manager (x. 8294)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (x. 2187)

DEPARTMENT APPROVAL: Chris Salomone, Community Development Manager (x. 8294)
Glenn Kephart, Public Works Manager (x. 8205)

FISCAL NOTE: None.

RECOMMENDATION: Staff recommends approval of the First Amendment to the Development Agreement as presented.

ADDITIONAL INFO: The Development Agreement (C2007-37) is scheduled to terminate when the Transit parking garage is completed. However, with the authorization of a GPLET Lease to GDG Partners LLC for the residential development of the site (C2006-301A), the Development Agreement needs to remain in effect until after the GPLET is initiated.

FIRST AMENDMENT TO
DEVELOPMENT AND DISPOSITION AGREEMENT
(C2006-301)

This First Amendment to Development and Disposition Agreement ("Agreement") is entered into as of November _____, 2008, by and between the City of Tempe, an Arizona municipal corporation ("Tempe"), Tempe Transit, L.L.C., an Arizona limited liability company ("TTL") and GDG Partners, L.L.C., an Arizona limited liability company ("Gray") (TTL and Gray are collectively the "Gray Parties". The Gray Parties and City are collectively (the "Parties").

R E C I T A L S :

A. Tempe and Gray are parties to various agreements, including without limitation a Settlement Agreement and Release dated as of June 15, 2006 (the "Settlement Agreement"), a Payment Agreement dated as of November 21 2007 (the "Payment Agreement"), and a Development and Disposition Agreement dated as of March 1, 2007 (the "DDA"). The Payment Agreement and the DDA are sometimes collectively referred to as the "Agreements".

B. The parties desire to amend the DDA in certain respects as more fully set forth below.

A G R E E M E N T :

NOW THEREFORE, in consideration of the premises and promises hereinafter set forth, the parties hereto agree as follows:

1. Recitals. The Parties hereby acknowledge that the Recitals are true and accurate in every respect.

2. Amendment. Capitalized terms used in this Section 2 shall have the meanings given such terms in the DDA.

3. Amendment of Section 7.1. Section 7.1 of the DDA is hereby amended in its entirety to read as follows:

7.1 Duration of Development Agreement. Unless sooner terminated, the term of this Agreement shall commence on the effective date of this agreement and continue until one (1) year after execution of the Improvements Lease referenced in Section 3.6 of this Agreement.

4. Except for the foregoing amendment, the DDA shall remain in full force and effect.

5. Due Authorization. Each of the parties hereto represents and warrants that it has properly granted authority to the persons or entities reflected on the signature pages to execute

this Agreement on its behalf. Each signatory below personally represents and warrants that such authority has been properly granted to such signatory.

6. Inurement. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

7. Integration. This Agreement together with all documents referred to or described in this Agreement are collectively an integration of the total agreement of the parties, embody and encompass all agreements between the parties and supersede all negotiations, prior discussions or preliminary agreements between the parties and there are no other agreements between the parties with respect to the same subject matter. No modification of the terms of this Agreement shall be valid unless made in writing and signed by all the parties hereto.

8. Construction. The Parties hereto acknowledge and agree that this Agreement is the product of negotiation and that the Agreement shall not be construed against the principal drafter.

9. Severability. In the event that any portion of this Agreement is found to be unenforceable for any reason, the unenforceable provision(s) shall be considered to be severable. The remainder of this Agreement shall continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement. Further, any Court considering any term alleged to be invalid, illegal, or unenforceable shall modify any challenged provision to the extent required to make it valid, legal, and enforceable and thereby give as much effect as possible to the intentions of the Parties to this Agreement.

10. Counterparts. This Agreement may be executed by the parties in one or more counterparts, and any number of counterparts signed in the aggregate by the parties shall constitute a single instrument.

11. Cancellation. This Agreement is subject to A.R.S. § 538-511.

12. Effectiveness. This Agreement shall become effective once it is signed by all parties. The effective date of this Agreement shall be the date it is executed by the last person to sign it.

[SIGNATURE PAGE FOLLOWS]

“Gray Group”

GDG PARTNERS, L.L.C., an Arizona limited liability company

By: _____

Its: _____

Tempe Transit L.L.C., an Arizona limited liability company

By: GDG Enterprises L.L.C., an Arizona limited liability company, its Manager

By: _____

Its: _____

“Tempe”

CITY OF Tempe, an Arizona municipal corporation

By: _____

Hugh L. Hallman, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

By: _____

Kutak Rock LLP
Attorneys for Gray Parties

APPROVED AS TO FORM:

By: _____

Tempe City Attorney’s Office
Attorneys for City of Tempe

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2008, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____, of Tempe Transit, LLC, an Arizona limited liability company, whom I know personally to be the person whose name is subscribed to this instrument, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public