

**TOWN OF PRESCOTT VALLEY  
REQUEST FOR COUNCIL ACTION  
Date: December 8, 2011**

**SUBJECT:** Amendment to Additional Infrastructure Development Agreement

**SUBMITTING DEPARTMENT:** Town Management

**PREPARED BY:** Greg Fister, Economic Development Manager

**AGENDA LOCATION:** Comments/Communications , Consent , Work/Study ,  
New Business , Public Hearing , Second Reading

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**ATTACHMENTS:** (a) Resolution No. 1774, (b) Amendment Additional Infrastructure Development Agreement, and (c) Report by Applied Economics (w spreadsheet)

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**SUMMARY/BACKGROUND:** The Town Council adopted Resolution No. 1351 on May 24, 2005, to approve an Additional Infrastructure Development Agreement for approximately sixty (60) acres on the west side of Glassford Hill Road to provide for construction of public improvements needed for Fain interests to develop the property for commercial purposes. The Agreement also related to construction of additional improvements needed for the nearby Events Center. The Agreement arranged to reimburse Fain for its verified costs to construct the improvements (at an interest rate of 1% over prime) over a period of years, from a portion of transaction privilege tax revenues collected from the property.

Background: As permitted by the Agreement, the Town Manager issued a letter dated March 30, 2006 approving Fain's revision to the listed improvements and approving a phasing plan. On July 27, 2006, the Council approved re-zoning for Phase 2 (19.65 acres) from RCU-70 (Residential; Conditional Use Permits) to C2-PAD (Commercial; General Sales & Services – Planned Area Development). On September 28, 2006, the Council approved re-zoning for Phase 1 (16.7 acres) and Phase 3 (14.37 acres) from RCU-70 (Residential; Conditional Use Permits) to C2-PAD (Commercial; General Sales & Services – Planned Area Development). On January 11, 2007, the Council approved a Final Development Plan (FDP 06-034) for a Kohl's store and other stores in Phase 1.

On March 13, 2007, the voters formally approved the previous re-zoning of Phase 2 in a referendum election [5,598 in favor (66%) and 2,893 opposed (34%)]. Unfortunately, on June 7, 2007, opponents of the Phase 2 re-zoning filed a lawsuit to declare the Development Agreement unconstitutional, illegal and void, and to enjoin any action under it. In a letter dated July 13, 2007, Fain informed the Town that it was waiving its right to build the improvements in phases and would build all of the improvements at once. Also, on October 25, 2007, the Council determined to approve a Final Development Plan (FDP 07-014) for a Wal-Mart Supercenter in Phase 2. Finally, after motions and oral argument that resulted in a judgment in favor of the Town and other defendants, the parties notified the judge on August 27, 2008 that a settlement agreement had been reached that precluded any appeal.

The verified out-of-pocket costs incurred by Fain for the improvements were \$2,457,388.07 (July 13, 2007), \$1,105,128.90 (September 18, 2007), \$1,199,359.39 (October 1, 2007), and \$849,100.71 (February 15, 2008), for a total of \$5,610,977.07. The Kohl's and related stores were constructed on Phase 1, and a Maverik was later constructed on Phase 3. However, delays related to the referendum and lawsuit moved the planned construction of the Wal-Mart Supercenter in Phase 2 into the period of the world-wide economic recession, and construction has since been postponed several times. Only recently have construction plans been submitted by Wal-Mart (with an anticipated opening in early 2013). As a

result, after application of specified interest, payments of TPTax revenues to-date have left a balance owed to Fain of \$6,338,326.89 as of June 30, 2011.

**This Action:** The parties now propose to amend the earlier Agreement to extend the time by 10 years for reimbursement to Fain for costs incurred for the listed improvements. It is felt this accounts for the earlier delay as well as on-going worldwide economic uncertainty. It should be noted that the original Agreement was adopted prior to revisions to ARS §9-500.11 which added new requirements for adoption of “retail development tax incentive agreements”. Although an argument might be made that the new requirements do not apply to this Amendment, the Town has determined to comply with the new requirements. Therefore, arrangements have been made for review by a third-party (Applied Economics) of the amended arrangement for sharing TPTax revenue from the property which confirms that the arrangement should reasonably provide a benefit to the Town greater than its cost.

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**OPTIONS ANALYSIS:** The Council may adopt Resolution No. 1774 approving this Amendment to Additional Infrastructure Development Agreement, propose revisions to the Amendment prior to adoption, OR decline to adopt Resolution No. 1774 approving the Amendment.

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**ACTION OPTION:** Motion to authorize the Mayor (or, in his absence, the Vice Mayor) to sign Resolution No. 1774 approving an Amendment to Additional Infrastructure Development Agreement, **OR** Motion not to approve Resolution No. 1774. **VOTE.**

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**RECOMMENDATION:** Staff recommends authorizing signature of Resolution No. 1774 approving the Amendment to Additional Infrastructure Development Agreement.

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**FISCAL ANALYSIS:** If the Development Agreement is not amended, it is likely Fain will not be reimbursed for its verified costs to build the listed improvements as earlier anticipated. It is understood that all such agreements have a level of risk and do not guarantee reimbursement. On the other hand, the reasons for the earlier agreement not operating as expected were extraordinary and outside the control of either party. The public has benefitted from these improvements, and the potential for future developers agreeing to take the risk to build such improvements in advance may well be impaired if an effort is not made by the Town to improve the risks on this one.

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**REVIEWED BY:**

Management Services Director \_\_\_\_\_

Town Clerk \_\_\_\_\_

Town Attorney \_\_\_\_\_

Town Manager \_\_\_\_\_

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**COUNCIL ACTION:**

Approved  Denied  Tabled/Deferred  Assigned to \_\_\_\_\_