



# City Council Report

**Date:** June 17, 2024

**To:** City Council

**Through:** Christopher J. Brady, City Manager  
Marc Heirshberg, Deputy City Manager

**From:** Jaye O'Donnell, Economic Development Director  
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**Subject:** Discuss and consider entering into an Amended and Restated Development and Pre-Annexation Development Agreement "Destination at Gateway" with BCB Group Investment, LLC for approximately 128+/- acres of property generally located at the corner of South Signal Butte Road and East Williams Field Road within the corporate limits of the City of Mesa, and 27 +/- acres of property located in Maricopa County, AZ and outside the corporate limits of the City of Mesa, AZ (Council District 6)

## Purpose and Recommendation

The purpose of this report is to discuss and consider approving an Amended and Restated Development Agreement and Pre-Annexation Development Agreement ("Amended DA") with BCB Group Investment, LLC ("Developer"). This development agreement includes approximately 128 +/- acres of property of which 85 +/- acres were rezoned in 2020 through Case No. ZON20-00129 ("2020 Rezoning") to General Commercial with a Planned Area Development overlay and Council Use Permit (GC-PAD-CUP). As part of the Amended DA, 43 +/- acres are being requested to be added to the project with a rezoning to GC-PAD-CUP and Light Industrial with a Planned Area Development overlay and Council Use Permit (LI-PAD-CUP) through Case No. ZON22-00267. The Amended DA has a pre-annexation element that includes an additional 27 +/- acres of property located in Maricopa County, Arizona. (see Exhibit A)

Staff recommends that the City Council approve the Development Agreement.

## Background

The Developer requested the Amended DA for the approximately 128+/- acres at the southeast and southwest corners of Williams Field Road and Signal Butte Road (the "Property") to allow development of a high-quality, master-planned, mixed-use, commercial, and multiple residence development known as "Destination at Gateway". The Developer intends to develop the Property to include an auto mall, a commercial area with multiple retail establishments for motor vehicles of between up to six to eight +/- New Car Dealerships, which could also include Used Car Dealerships and Motorcycle Dealerships. The Developer also owns approximately 27 +/- acres of

land contiguous to the subject Property that is in unincorporated Maricopa County, Arizona (the “Additional Property”, see Exhibit A) for which the Developer intends to request an annexation into the City and, if approved, to develop it with the Property as a master planned development.

In 2018, the City commissioned an analysis of opportunities for new automotive dealership development in Mesa. The study indicated the planned interchange at the intersection of the Gateway Freeway (SR 24) and Signal Butte Road is the only location in Mesa that meets the requirements for an auto mall based on a location analysis. Based on the study, as a part of the 2020 Rezoning of the project, the City entered into the current development agreement for the Destination at Gateway project (Maricopa County Recorder No. 2020-0649618) that allowed for the reimbursement for certain public infrastructure dedicated to the City in the form of a retail sales tax incentive pursuant to A.R.S. § 9-500.11(V.2).

As part of the current, subject rezoning request, the Developer is requesting to add to the size of the project by including in the Amended DA the additional 43± acres of the Property which is currently zoned Agriculture (AG), Light Industrial (LI), and General Industrial (GI) for a total of 128+/- acres. (See Exhibit A). The LI, AG and GI portions will be rezoned to GC-CUP-PAD and LI-CUP-PAD respectively (See Exhibit A). In addition, as previously noted, the Developer would like the Amended DA to include pre-annexation terms related to the Additional Property should it be annexed into the City.

## **Discussion**

From the proposed conceptual plan and the Amended DA, the predominant uses anticipated on the site are regional commercial uses, particularly high-quality, new auto dealerships, and other commercial uses that will serve the surrounding neighborhoods and region. Development of the site may also include multi-residence as a secondary use.

Overall, there is a significant economic benefit to the City associated with the proposed development that includes additional jobs and new sales tax revenues generated by automobile sales and dealership operations.

The subject site requires substantial investment in public infrastructure by the Developer to facilitate development of the site and adjacent properties, including construction of streets and related water and sewer lines as the Property is currently in an undeveloped area. Significant improvements are necessary in order to attract the type of development that are of an economic benefit to Mesa.

Due to the economic factors, the Developer and the City are proposing to enter into the Amended DA that includes an increased retail sales tax incentive (from a maximum of \$6 Million Dollars to \$14.4 Million Dollars) and extended economic incentive period due to the additional real property being added to the project requiring the installation of additional public infrastructure to be dedicated to the City, as well as the rising construction costs that have been seen nationwide since 2020. Without the incentive, the Destination at Gateway project would not be able to locate in Mesa in the same time, place, or manner primarily because of the high level of infrastructure costs necessary to support the development. It should be noted that there is significant competition to attract an auto mall to a municipality because of the amount of transaction privilege (sales) tax an auto mall generates for a jurisdiction.

The purpose of the Amended DA is to guide future development of the Property, and potentially the Additional Property, as a high quality, mixed-use, master planned development with certain economic incentives that will yield the highest and best use of the site and bring new tax revenue to the City. The development agreement includes the following stipulations:

### Land Use Restrictions

The Developer has agreed to certain land use restrictions on the Property and the Additional Property (if annexed) to maintain the Mixed-Use Activity District character designation of the General Plan. The primary land use restrictions set forth in the Amended DA are as follows and shall remain in place 30 years from the effective date of the agreement:

1. Minimum Commercial. A minimum of sixty percent (60%) of the acreage of the Property must be commercial development.
2. Maximum Residential. A maximum of forty percent (40%) of the Property that is zoned General Commercial may be used for multiple residence.
3. Location of Residential Uses. Residential uses, including multiple residence, are prohibited in the: (a) southwest corner of the intersection of South Signal Butte Road and East Williams Field Road for an area of five (5) acres; and (b) southeast corner of the intersection of South Signal Butte Road and East Williams Field Road, within two hundred feet (200') of East Williams Field Road south for a distance of seven-hundred fifty feet (750') east of the South Signal Butte Road centerline, and within two hundred feet (200') east of the South Signal Butte Road centerline. Access points out to South Signal Butte Road are permitted that allow for not more than reasonable two-way access and appurtenant landscaping.
4. Prohibited & Restricted Uses. The Amended DA includes certain agreed upon prohibitions and restrictions on land uses that would otherwise be allowed under the Mesa Zoning Ordinance and are new requirements compared to the original development agreement, most notably are the following:
  - a. Automobile Rentals are prohibited as a principal use but allowed as an accessory use to a New Car Dealership or Used Car Dealership.
  - b. Automobile/Vehicle Service and Repair, Major is prohibited as a principal use but allowed as an accessory use, including for a dealership service center.
  - c. Automobile/Vehicle Service and Repair, Minor as a use is limited as a principal use to either (a) two locations as a principal use, or (b) one location as a principal use and one location as an accessory use when developed with a commercial or retail sales principal use that is unrelated to motor vehicles or motorcycles; the use is also allowed as an accessory use as part of a dealership service center.
  - d. Automobile/Vehicle washing facilities are prohibited as a principal use but are allowed as an accessory use, including as part of a dealership.
  - e. Service Stations are limited to a maximum of one principal use facility, but additional gas facilities are allowed as an accessory use to a permitted use.
  - f. Stand-alone food and/or beverage service Drive-Thru Facilities are limited to a maximum of five stand-alone facilities (non-end cap).

### Design Element

The Developer agreed to submit comprehensive design guidelines to the City prior to the approval of any site plan to ensure high-quality architectural design for the Project. In addition, the DA sets forth noise decibel limits in the event a public address system is utilized and requirements that any exterior light fixture containing lighting that emits at a 150-wattage equivalent (e.g. 23 LED

watts) shall be fully shielded (full cutoff) from visibility at the property line to reduce glare and light-spillage onto nearby properties.

### Public Improvements

The Developer is required to construct and dedicate to the City of Mesa street improvements, which includes pavement, curb, gutter, sidewalk, streetlights, traffic signals, storm drain, water and sewer lines and landscaping, at the following locations that will be dedicated to, accepted and controlled by the City: (1) south side of Williams Field Road adjacent to the Property; (2) east and west sides of Signal Butte Road adjacent to the property (including the Additional Property if the right of way is annexed); (3) a portion of the north and south sides of East Underwood Street; and (4) a portion of the north and south sides of the new internal auto mall street.

The cost of the street improvements will be reimbursed to the Developer as an economic incentive up to \$14.4 million ("Sales Tax Rebate"), from the transaction privilege taxes and use taxes actually collected by the City from dealerships on the Property subject to certain restrictions and requirements. *(For more information, see the Economic Incentives below.)*

Subject to enforced delay, the completion of construction of the public infrastructure improvements and required dedications under the Amended DA must occur on or before April 1, 2028 and the first New Car Dealership open for business on a full-time basis on or before July 1, 2029. Failure to meet the deadlines, even with allowed delays under the agreement, by December 31, 2029, means the Developer is not eligible to receive the Sales Tax Rebate.

### Economic Incentives (Sales Tax Rebate)

The Sales Tax Rebate consists of the non-dedicated portion of the transaction privilege and use tax collected by the City. Of the City's 2.0% sales tax rate, the Sales Tax Rebate will equal 50% of the 1.2% non-dedicated sales taxes generated by the operations of the dealership(s) and related vehicle service facilities. The sales tax reimbursement will not include any portion of the 0.3% Streets and Maintenance Tax, 0.25% Quality of Life Tax and 0.25% Public Safety Tax.

The maximum Sales Tax Rebate would be equal to the lesser of the actual cost of public improvements constructed and dedicated to the City, or a maximum of \$14.4 million. To be eligible for reimbursement for the costs of the public improvements, the public improvements must meet certain requirements set forth in the Amended DA, such as state statutory requirements for Public Buildings and Improvements in A.R.S. Title 34.

The Economic Incentive Period (the period of time in which the non-dedicated sales tax generated at the Property from the dealerships can be used towards the Sales Tax Rebate) commences after (i) all the public improvements are complete and dedicated to the City in accordance with the agreement requirements; and (ii) the first New Car Dealership at the Project is open to the public for business after receiving a certificate of occupancy.

The Economic Incentive Period expires twelve (12) years thereafter but may be extended up to three (3) times, for a period of three (3) years per extension, for each subsequent New Car Dealership receiving a final certificate of occupancy, so long as any subsequent New Car Dealership(s) are opened prior to the expiration of the Economic Incentive Period. This results in a maximum possible Economic Incentive Period of twenty-one (21) years.

As the Amended DA includes a retail sales tax incentive, Arizona state law requires the City to adhere to the following requirements under A.R.S. § 9-500.11(V.2):

1. A notice of intent to enter into a retail sales tax incentive agreement adopted fourteen days before approving the Amended DA. The notice was adopted by the City Council via Resolution No. 12173 on April 15, 2024.
2. The following findings must be made by the City Council, affirmed by a 2/3 vote of the Council which are being presented to the City Council via a separate resolution at the same meeting as the proposed approval of the Amended DA:
  - a. The proposed tax incentive is anticipated to raise more revenue than the amount of incentive for the duration of the agreement; and
  - b. In the absence of a tax incentive, the retail business would not locate in the City in the same time, place or manner.
3. The findings in Section 2 above must be verified by an independent third-party, funded and selected solely by the City, before the City enters into a retail tax incentive development agreement. A copy of the third-party's findings are provided.
4. Approval of the Amended DA made by a 2/3 majority vote of the City Council.

### Additional Property

The Developer desires to have the 27 +/- acres of Additional Property annexed into the corporate limits of the City in order to develop the location as a part of the Project that is the subject of this Agreement. If it is annexed, the eligible sales taxes collected for any New Car, Used Car, or Motorcycle Dealership can be counted towards the Sales Tax Rebate.

### **Alternatives**

The following alternatives are presented for consideration:

#### APPROVAL OF THE AMENDED DEVELOPMENT AGREEMENT.

Approval of the Amended DA will facilitate expansion of the Destination at Gateway Project, create new tax revenues for the City from the proposed new auto dealerships, and promote high-quality development in southeast Mesa.

#### NO ACTION.

If the Council chooses not to approve the Amended DA, the Destination at Gateway Project will not be expanded and the current 2020 development agreement will remain in effect.

Staff recommends the City Council approve the development agreement.

### **Fiscal Impact**

The proposed retail Sales Tax Rebate will not exceed \$14.4 million and is intended to cover the cost of specific infrastructure improvements that will be completed by the Developer, then dedicated to, accepted and controlled the City. The independent third-party analysis required by A.R.S. § 9-500.11(V.2) and conducted by Applied Economics (see Exhibit B) indicated if only one dealership is built, the City could retain an estimated \$15 million in sales tax collections, including construction sales tax, during the initial 12-year term. If eight dealerships are built by 2032, the City could retain an estimated \$255.6 million in sales tax collections during the potential twenty-one-year term. In both cases, the revenues to the City exceed the maximum reimbursement of

\$14.4 million. Additional dealerships would increase revenues to the City during the up to twenty-one-year Economic Incentive Period in proportion to the time in which they are built.

The findings of the economic impact analysis conducted by Applied Economics also established: (a) the amount of tax revenues raised by the proposed development will be more than the Sales Tax Rebate incentive to the Developer; (b) the development would not have occurred in the same time, place or manner without the tax incentive; and (c) the incentive will only provide reimbursement for public infrastructure that will be dedicated to and owned by the City.

### **Coordinated With**

The Amended DA was coordinated with the Office of Economic Development, the Development Services Department, the Engineering Department, and the City Attorney's Office.

Attachments: Exhibit A, Area and Additional Property Map  
Exhibit B, Independent Third-Party Economic Impact Analysis  
Exhibit C, Amended and Restated Development Agreement