

**RESOLUTION NO. 1900**

**A RESOLUTION APPROVING AN AMENDMENT TO A DEVELOPMENT AGREEMENT BETWEEN ARGYLE CAPITAL, LLC AND THE CITY OF WILSONVILLE SPECIFYING THE AMOUNT AND METHOD FOR REIMBURSEMENT OF SURPLUS STREET SYSTEMS DEVELOPMENT CHARGE CREDITS.**

WHEREAS, the City of Wilsonville and Argyle Capital, LLC entered into a Development Agreement concerning the necessary dedication of land for and capital improvement of public infrastructure necessary to meet the development permit requirements for the Stage II approval of the Argyle Square project; and,

WHEREAS, the Development Agreement, which was adopted by Council Resolution No. 1827, provided for SDC credits for construction by Argyle of certain capital infrastructure, including improvements on Elligsen Road and on Parkway Center Drive, as well as the construction of improvements needed south of Jack Burns Way, to be paid with funds available from other collections of street SDCs; and,

WHEREAS, design changes to the infrastructure improvements and differences between projected and actual employment numbers have produced an surplus of approximately \$450,000.00 in street system development charge credits; and,

WHEREAS, ORS 223.304 (5) (c ) and W. C. 11.040(9) (c) and (d) which codifies Article IX of Ordinance No. 386 and authorizes the City Council to provide reimbursement of transportation SDC credits and that it may do so by other means as well as under the payback provisions of W.C. 3.116, which provides for the payment of funds from properties benefiting from the improvement to the party making the improvement; and

WHEREAS, an amendment to the Development Agreement between the parties is necessary to quantify the surplus SDC credits and provide for reimbursement consistent with applicable law,

NOW THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council adopts the above recitals as findings and incorporates them by reference herein.
2. The City Council approves and authorizes the Mayor to sign the First Amendment to Development Agreement, attached as Exhibit 1, on behalf of the City.
3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 4th day of October, 2004 and filed with the Wilsonville City Recorder this date.

  
\_\_\_\_\_  
CHARLOTTE LEHAN, MAYOR

ATTEST:

  
\_\_\_\_\_  
Sandra C. King, CMC, City Recorder

SUMMARY of votes:

Mayor Lehan	Yes
Council President Kirk	Yes
Councilor Scott-Tabb	Excused
Councilor Knapp	Yes
Councilor Holt	Yes

Attachment:

Exhibit 1 - First Amendment to Development Agreement

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

This First Amendment to Development Agreement (this "Amendment"), dated as of this \_\_\_\_ day of October 2004, is made by and between Argyle Capital LLC, an Oregon limited liability company ("Argyle") and the City of Wilsonville, an Oregon municipal corporation (the "City").

**RECITALS**

- A. Argyle and the City are parties to that certain Development Agreement dated as of April 29, 2003 (the "Agreement") regarding the provision of certain infrastructure improvements to the development known as Argyle Square, and the reimbursement for such improvements.
- B. With the exception of Pads 1, 2 and 4, Argyle has completed development of the project, including construction of all off-site and on-site infrastructure improvements.
- C. Due to the difference between projected employment numbers and actual employment numbers and certain design changes to the infrastructure improvements agreed to by the parties, the parties now estimate that upon completion of all infrastructure and payment of all SDC charges, Argyle will have a surplus of approximately \$450,000.00 in total street systems development charge credits ("Surplus Credits").
- D. The parties desire to enter into this Amendment to provide the terms and conditions upon which the City will reimburse Argyle for the Surplus Credits over time.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. Agreement to Reimburse Surplus Credits: The City acknowledges that as of the effective date of this Amendment, Argyle has \$450,000.00 in Surplus Credits. Pursuant to the terms and conditions of this Amendment, the City agrees to reimburse Argyle for the ~~full amount of~~ Surplus Credits held by Argyle, as such amount may be adjusted pursuant to Section 3 below.

2. Method for Reimbursement of Surplus Credits: Surplus Credits shall be subject to reimbursement from transportation SDCs under the reimbursement provisions set forth in W.C. 3.116. Within 90 days of receipt by the City of street SDCs pursuant thereto (Article VII of Ordinance No. 386), less credits pursuant to W.C. 11.04 (9) (Article IX of Ordinance No. 386) principally from within the geographic area depicted on Exhibit A (the "Reimbursement Area"), which will receive the greatest derived benefit from the improvements, the City shall pay all such amounts to Argyle as a reimbursement for the Surplus Credits. Such SDC payback reimbursement shall occur within ten (10) years of the date of this Agreement and if insufficient development has taken place within the ten years, other SDC funds may be used.
3. Adjustment of Surplus Credits: Upon receipt by the City of documentation reasonably acceptable to the City demonstrating a change in the amount of Surplus Credits, the amount of Surplus Credits shown on Exhibit A shall be adjusted to reflect the actual amount of Surplus Credits subject to reimbursement under this Amendment.
4. Full Force and Effect: Except as amended herein, the Agreement remains in full force and effect according to its terms.

IN WITNESS WHEREOF, the parties have set their hands as of the day and year first written above.

**ARGYLE:**

Argyle Capital LLC, an Oregon limited liability company

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_

**CITY:**

City of Wilsonville, an Oregon municipal corporation

By Charlotte Leha

Its MAYOR

Date: OCTOBER 7<sup>TH</sup>, 2004

